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Elena Kagan News 1 [4]

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House officials became the "Working Group on Appointments" chaired by Fielding. They institutionalized a formal and active role for the White House in the process (pp. 291-92). As in every administration before and since, they set about to appoint judges of like mind with the chief executive. Reagan's process differed from Carter's approach in two marked respects. First, otherwise qualified persons would not be considered unless they shared the administration's judicial philosophy (p. 290). Second, the Reagan Administration abandoned the merit selection vehicles put in place, which were ironically similar to those Reagan himself had used as California's governor (pp. 287, 289). The importance of the Working Group and its interview process (pp. 303-04) cannot be overemphasized. To a degree not seen before, Reagan turned the selection process over to these subordinates and particularly to his longtime friend Ed Meese (pp. 291, 299-302). The Working Group made judicial appointments a part of the president's domestic policy. Reagan made phone calls to those who were selected asking them to serve - a technique that was not only flattering, but certain to reinforce to the appointee that he was a Reagan appointee (p. 294). There were several bumps on this road to staffing the courts. The most notable concerned the conflict between Reagan's campaign commitment to appoint women and the desire of the conservatives for ideological purity. Female appointees were automatically suspect because of equal rights and abortion issues. This conflict came to a head with the recommendation to appoint the general counsel of Hallmark, Judith Whittaker, as a federal judge in Missouri (pp. 299, 320, 330-33). Whittaker had taken no position on abortion or other political issues, but she was thought to support the Equal Rights Amendment. Despite high marks from the ABA, the support of prominent Missouri Republicans, and her own GOP bona fides, her perceived support for the ERA was enough to foment a right-wing attack. Iowa Lieutenant Governor Terry Branstad and party activist and fundraiser Richard Viguerie labeled her a Democrat and pro-abortionist. The power of unfounded smears by attackers who did not know their victim was quickly apparent. Meese led the Working Group to conclude that the Whittaker nomination should be dropped because she lacked, as a perplexed deputy attorney general explained, "broad-based support" (p. 333). Even with the Senate firmly in Republican hands, not all Reagan nominees were confirmed. Jefferson Sessions III was named to a federal bench in Alabama, but ran into trouble on civil rights issues; even after four hearings, the nomination could not be saved.¹⁷ When Reagan's administration encountered opposition to a nomination it truly desired, it was willing to push. Two examples are the eventually successful fights to confirm Dan Manion to the Seventh Circuit and Alex Kozinski to the Ninth (pp. 309-14). In another unusual confirmation struggle with a Republican senator in a Republican-controlled Senate, the administration found its choice for the Eighth Circuit blocked by South Dakota's James Abdnor. Senator Abdnor was trying to end a twenty-two-year drought for his state on that court. Unable to persuade Abdnor, the Republican leadership changed the rules in midsession so that a senator could no longer place a "hold" on a judicial nominee from another state (pp. 321-22). That change occurred in 1983. Today, the Republican-controlled Senate has gone back to its old custom allowing cross-state blockage. Reagan's efforts were remarkably successful in aiding him to reshape the lower federal courts. He appointed a record seventy-eight appellate and 290 district judges. Like Carter he was helped by a judgeship bill that created eighty-five new judges and by a Senate that was in friendly hands for six of his eight years. Also like Carter he kept the ABA at arm's length and like Roosevelt he tried to make his judicial appointments an extension of his domestic policy. He was aided by a staff who understood this purpose and enthusiastically backed its implementation. Reagan, like FDR, wanted to reshape the courts not to reflect his vision but to share it and, like his

onetime hero, he did it. But, like every president from Washington to Clinton and beyond, Reagan's success waxed and waned. Not simply because other presidents and Senates come after him, but because the thing that he leaves as a legacy - an independent judiciary - will itself change as the issues of each new day come before it and seek answers to questions previously unasked. CONCLUSION This is an eye-opening book about a process that has been in place virtually out of sight since the beginning of the Republic and which, on balance, has worked rather well. There seems to be a natural ebb and flow with the checks-and-balances-system of the framers preventing any party, no matter how long it dominates the executive or the legislative branches, from dominating the third branch. This will comfort those in either party who have feared otherwise. The system has worked well in modern times except for the breakdown in the Truman years and the analogous situation today to which Goldman alludes in his summing up (pp. 364-65). Both political reality and pressure from a citizenry that rejects the notion that the courts are merely another political branch have served to protect the judiciary from ideologues of the left and the right. The historical overview of the process also demonstrates the wisdom of a cardinal rule of practical politics, "Never create or assert an official prerogative that could not be safely entrusted to your adversaries."ls Goldman has produced a comprehensive, well-organized and crisply written research work with excellent tables for any scholar or student of the American judiciary. It ends in 1988 and leaves the reader eager to know how Presidents Bush and Clinton handled judicial selection. I hope I will have the opportunity to review the sequel. I can just imagine how the book will start. Professor Goldman will refer to his previous book and the fact that it covered a span of fifty-five years and seven presidents. He will remark on the smooth transitions that occurred when two of these presidents died and a third resigned, each to be replaced by a man very different than the president the country had elected. He will say that for nearly two hundred years the process worked reasonably well. And then he must begin to write about the unprecedented crisis that we are only now beginning to understand. He will write about a group of men who, having had the unfettered power to select federal judges during the Reagan years, tried to cling to that power during the Bush years. Further frustrated by the election of Clinton, they viewed the 1994 election of the Republican senate as their private restoration to presidential power. In what may one day prove to be the biggest constitutional scandal of the Clinton era, this unprecedented shadow government of former Republican officials appears to have conspired with current officeholders to disrupt the entire judicial nomination process. In short, they were captured for posterity on their own videotape trading blackballs for contributions.¹⁹ The book may have a footnote about the nominee who exposed the shocking tape. It will be interesting to learn what became of him. Footnote: 1. Professor of Political Science, University of Massachusetts at Amherst. Footnote: 2. See Neil A. Lewis, *Jilted Texas Judge Takes on His Foes in Partisan Congress*, N.Y. TIMES, Nov. 16, 1997, at 1; Henry Weinstein, *Drive Seeks to Block Clinton Judicial Nominees*, L.A. TIMES, Oct. 26, 1997, at A3. These articles discuss the political nature of the stall placed upon President Clinton's nominees and efforts by right-wing groups to involve Republican senators in their fundraising projects by linking them to blocking federal judicial nominations. 3. Some articles of interest include: Richard S. Arnold, *Judicial Politics Under President Washington*, 38 ARIZ. L. REV. 473 (1996); Kim Dayton, *Judicial Vacancies and Delay in the Federal Courts: An Empirical Evaluation*, 67 ST. JOHN'S L. REV. 757 (1993); John M. de Figueiredo & Emerson H. Tiller, *Congressional Control of the Courts: A Theoretical and Empirical Analysis of Expansion of the Federal Judiciary*, 39 J.L. & ECON. 435 (1996); Sheldon Goldman, *The Bush Imprint on the Judiciary: Carrying on a Tradition*, 74 JUDICATURE 294

(1991); Orrin G. Hatch, *The Politics of Picking Judges*, 6 J.L. & POL. 35 (1989); Laura E. Little, *Loyalty, Gratitude, and the Federal Judiciary*, 44 AM. U. L. REV. 699 (1995); R. Samuel Paz, *Federal District Court Nomination Process: Smears of Controversy and Ideological Sentinels*, 28 LOY. L.A. L. REV. 903 (1995); Wm. Bradford Reynolds, *The Confirmation Process: Too Much Advice and Too Little Consent*, 75 JUDICATURE 80 (1991); Christopher E. Smith & Thomas R. Hensley, *Unfulfilled Aspirations: The Court-Packing Efforts of Presidents Reagan and Bush*, 57 ALB. L. REV. 1111 (1994); Carl Tobias, *Filling the Federal Courts in an Election Year*, 49 SMU L. REV. 309 (1996); Carl Tobias, *Rethinking Federal Judicial Selection*, 1993 BYU L. REV. 1257; Oona A. Hathaway, *The Politics of the Confirmation Process*, 106 YALE L.J. 235 (1996) (book review); Orrin G. Hatch, *Making a Real Mess*, 1995 PuB. INTEREST L. REV. 139 (book review); Gary A. Hengstler, *At the Seat of Power*, A.B.A. J., Apr. 1995, at 70; Elena Kagan, *Confirmation Messes, Old and New*, 62 U. CHI. L. REV. 919 (1995) (book review); Michael Stokes Paulsen, *Straightening Out The Confirmation Mess*, 105 YALE L.J. 549 (1995) (book review). Footnote: 4. In filling a vacancy on the Third Circuit, Roosevelt wrote at the bottom of a memo recommending one candidate named Jones, "Guffey backing MM," indicating Senator Guffey's endorsement of a different candidate, Musmanno. Roosevelt then turned around and, after applying personal charm and pressure, appointed a third man who did not want the judgeship but who was the President's choice. P. 28. 5. The blue slip was the extra-constitutional administrative convenience adopted early in the Eisenhower presidency as a way for home-state senators to indicate their support of or opposition to a nomination. It gives the committee chair a way to be advised in a nonpublic manner of the private views of a colleague. The blue slip only has the force the committee chair is willing to give to it, although there have been attempts to give it greater effect by resolutions of party conferences in the Senate. It is not to be confused with a "hold," which is a sort of secret club blackball that allows any senator to block a vote on a nominee from any state for any office for any reason or no reason by simply advising the majority leader that s/he desires to hold the nomination. Both practices have been criticized. See, e.g., HENRY J. ABRAHAM, *THE JUDICIAL PROCESS* 23-24 (6th ed. 1993); GEORGE C. EDWARDS III & STEPHEN J. WAYNE, *PRESIDENTIAL LEADERSHIP: POLITICS AND POLICY MAKING* (4th ed. 1997). Footnote: 6. We are experiencing this mindless partisan resistance once again and it is hurting the selection process and crippling the courts. In his year-end report, Chief Justice William Rehnquist noted how these partisan divisions and the Senate's inordinate delay in acting on nominations were leaving the judiciary shorthanded. WILLIAM H. REHNQUIST, 1997 YEAREND REPORT ON THE FEDERAL JUDICIARY (Jan. 1, 1998). The news media has responded to the harm caused by this delay and focused on the federal courts, productivity as at no other time. One article noted that in 1990, retired judges handled 3049, or 14.6% of the 20,836 federal trials. By 1997, the total number of trials was down to 17,266 yet trials presided over by the senior federal judges had risen to 3524 (or 20.4%). Pekkanen & Gill, *Judicial Vacancies Force Delays Create Case Backlog*, THE DETROIT NEWS, Feb. 8, 1998, at A5. In the U.S. Senate, Vermont Senator Patrick Leahy (D) has responded by introducing the "Judicial Emergency Responsibility Act," which would prevent lengthy Senate recesses and require the Senate to act on judicial nominations within 60 days during any declared judicial emergency. S. 1906, 105th Cong. (1998). Footnote: 7. THE OXFORD DICTIONARY OF QUOTATIONS 111 (3d ed. 1979). Footnote: 8. Goldman, *supra* note 3, at 299. Footnote: 9 Pp. 133-34. Contrast this to Senator Wiley's demand for half the benches in 1946, discussed above. 10. This may account for his appointment of W Brennan to the Supreme Court. P. 152. Footnote: 11. See ABRAHAM, *supra* note 5, at 23-24; EDWARDS & WAYNE, *supra* note 5, at 348. 12. "The President shall have Power to fill up all Vacancies that may happen during the

Recess of the Senate, by granting Commissions which shall expire at the End of their next Session." U.S. CONST. art. II, 2, cl. 3. Footnote: 13. Two of these recess appointees were confirmed. The one not confirmed was JFK's only nominee to be defeated (p. 187 & n.11) and he was subsequently nominated by Nixon and confirmed by a still-Democratic Senate (pp. 174-75). 14. However, he only appointed one woman, Sarah Hughes of Texas. P. 180. Footnote: 15. This approach can be readily seen in Johnson's working with Republican leader Senator Everett Dirksen to name judges Dirksen desired. P. 173. Footnote: 16. Pp. 244, 283. In the Reagan years the nominating commission was disbanded. Pp. 290-91. Footnote: 17. Pp. 308-09. He is now a United States Senator and a member of the committee that rejected him. The author does not tell us if this is a first, but in today's climate it may become an increasingly attractive option for unsuccessful nominees. Footnote: 18. Bruce Fein, The Chief Justice vs. Hatch, WASH. TIMES, Jan. 6, 1998, at A12. Bruce Fein was assistant attorney general in the Reagan administration. Footnote: 19. See Judicial Selection Monitoring Project, videotape and prospectus accompanying letter from Robert H. Bork, Sept. 9, 1997 (on file with author) (representing contributions to JSMP as tax-deductible); Judicial Selection Monitoring Project, Memorandum of Commitment to Paul Weyrich (same) (on file with author). See also Weinstein, supra note 2. Author Affiliation: * Currently in private practice with Hill, Gillstrap, P.C., Arlington, Texas, Chicago, Illinois, and Little Rock, Arkansas. Judge, Tarrant County Court at Law No. 2, 1979-1983; Judge, 348th Judicial District of Texas, 1983-1996. Nominated December 1995, to U.S. District Court, Northern District of Texas. A.B. 1968, Georgetown; J.D. 1971, University of Texas. - Ed.

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LEVEL 1 - 44 OF 166 STORIES

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The Baltimore Sun

April 9, 1998, Thursday, FINAL EDITION

SECTION: TELEGRAPH (NEWS), Pg. 1A

LENGTH: 1323 words

HEADLINE: Tobacco settlement 'is dead' RJR sparks revolt by industry against expensive Senate deal; firms spurn more talks; Clinton, Congress vow to fight; Efforts to reach national agreement all but collapse;

BYLINE: Jonathan Weisman, SUN NATIONAL STAFF

The Baltimore Sun, April 9, 1998

BODY:

WASHINGTON -- Efforts to craft a landmark tobacco settlement all but collapsed yesterday amid acrimony and finger-pointing as one after another the nation's cigarette makers renounced attempts to forge a compromise and vowed to fight anti-smoking legislation.

In a blistering speech, Steven F. Goldstone, chairman and chief executive of RJR-Nabisco Inc., denounced President Clinton for putting politics over policy, excoriated public health groups for making unrealistic demands on the industry, and blasted Congress for dissolving "into a taxing frenzy on a disfavored industry."

The \$ 368.5 billion settlement, reached between the industry and 40 state attorneys general last June, "that could have set the nation on a dramatically new and constructive direction regarding tobacco, is dead," Goldstone said.

Moreover, he added, "the legislative process, as far as tobacco is concerned, is broken beyond repair."

The statement from the chief of the nation's second largest tobacco company was quickly seconded by the nation's largest, Philip Morris Cos. Rapidly following suit were: Lorillard Tobacco, Brown & Williamson Tobacco Corp. and U.S. Tobacco Co., a manufacturer of smokeless tobacco. "Partisan politics, the absence of White House leadership and an obsession for punishing the industry have all but destroyed any hopes of achieving a workable solution," said Nicholas G. Brookes, Brown & Williamson's chairman and chief executive officer.

J. Phil Carlton, the former North Carolina Supreme Court justice hired by the industry to negotiate the settlement in Washington, said he is under orders from his employers not to talk to the White House.

"They are making plans to fight. This is predominantly a disavowal of the process, not posturing," warned Richard Scruggs, the Mississippi trial attorney who helped forge the original settlement. "I personally don't believe [the deal] is dead, but I'm a Christian and I believe in life after death. It might take some sort of miracle to bring it back."

Capitol Hill, the White House and public health activists reacted defiantly, vowing to press forward with sweeping legislation to combat youth smoking -- with or without the industry's consent.

'Supposed to be scared?'

"What are you telling me?" Richard Daynard, director of Northeastern University's Tobacco Control Resource Center, asked the industry. "That you're going to take your marbles and go home? I'm supposed to be scared?"

Some anti-tobacco groups hinted the industry's move could be just a bluff to soften tough legislation moving its way through the Senate. One White House tobacco expert even predicted the tobacco industry may have made lawmakers' jobs easier by throwing down the gauntlet to Congress.

In Chicago, Clinton said: "I hope that [R. J. Reynolds] will reconsider, but there are a lot of options left that still have to be explored. I've been working for two years on this. I don't intend to stop now."

The Baltimore Sun, April 9, 1998

The bitterness of yesterday's events was in contrast to last week, when the Senate Commerce, Science and Transportation Committee overwhelmingly approved broad legislation that would increase the federal tobacco tax by \$ 1.10 a pack, raise \$ 516 billion over 25 years, severely restrict tobacco marketing and advertising, and establish anti-tobacco education and smoking-cessation programs nationwide.

Although that bill was denounced by the industry and criticized by health groups that saw it as too weak, committee approval was seen as a major step forward.

"I think we are a long way from, quote, falling apart," said Sen. John McCain, the Arizona Republican who chairs the commerce panel, refusing to go along with the industry's death notice.

The RJR-Nabisco announcement came as no surprise, McCain said. The massive leveraged buyout in the 1980s that merged food conglomerate Nabisco with tobacco giant R. J. Reynolds saddled the company with enormous debts, making it more sensitive than the rest of the industry to congressional demands, he said.

Nevertheless, McCain vowed he would not let the industry dictate the terms of tobacco legislation. Even without the industry's assent, Congress could enact tobacco tax increases, anti-tobacco programs and some marketing and advertising restrictions.

McCain had the support of much of Congress yesterday as Republicans and Democrats in both houses vowed to press on.

But the attorneys general who negotiated the original deal were more glum than defiant.

"I'm pessimistic, but I have not entirely given up hope," said Colorado Attorney General Gale A. Norton. "I think the mood in Washington during the last few weeks has been there is no limit on what can be imposed on the tobacco industry. You have to return to reality."

Unconstitutional

Any legislation passed over industry opposition would likely be limited. The severe advertising and marketing restrictions in the McCain bill would almost certainly be thrown out as an unconstitutional infringement on free speech, said Mississippi Attorney General Michael Moore.

The same goes for measures restricting industry lobbying, banning the Tobacco Institute, which lobbies on behalf of the industry, and mandating internal training programs to change the industry's corporate culture, said Norton.

Another crucial provision of the McCain bill could also be ruled illegal. It would slap additional penalties of up to \$ 3.5 billion a year on companies that fail to bring down youth smoking rates.

"A skinny bill is not the best policy," Moore said.

With the industry bolting from Congress, Maryland Attorney General J. Joseph Curran Jr. said the state should prepare to take cigarette makers to court.

The Baltimore Sun, April 9, 1998

And he appealed to lawmakers in Annapolis for help.

Curran is seeking legislation to undo a court ruling that significantly weakened Maryland's case by requiring the state to bring Medicaid patients into court one by one to prove that their illnesses resulted from smoking.

The attorney general's bill would make it possible to use statistics to prove how much Medicaid spending was due to tobacco-related disease.

"Mr. Goldstone's pulling out probably means our case is more likely to go to trial than ever before," Curran said. "I need the bill to show a jury the damage Maryland has suffered."

But with the General Assembly session set to adjourn at midnight Monday, the bill's prospects remain uncertain.

Maryland seeks \$ 3 billion in compensatory and \$ 10 billion in punitive damages from the tobacco companies. The case is set for trial in April 1999.

Not everyone was so pessimistic yesterday about the prospects of a national deal. Elena Kagan, a White House deputy domestic policy adviser, said Goldstone's repudiation of the deal may push to Congress to enact legislation that it might otherwise have avoided.

Kagan said the public had come to see the original tobacco settlement as a bailout of the industry, and Republican leaders feared that passing it intact would tar them as too friendly with the tobacco companies.

Republican failures

Now that the industry has vowed to fight any bill emerging from Congress, Kagan said, Democrats could paint Republicans as toadies to the industry for failing to produce any legislation at all.

"We've long said two things will make this happen: People committed in Congress to reducing teen smoking would have to act, and the other members would have to be embarrassed to go home without a bill," Kagan said.

"What the industry has done will make that embarrassment even greater. If there's no action, it will look like Congress has bent to the will of the industry."

Mississippi's Moore did not go that far, but he predicted a tobacco bill in the end, perhaps one the industry will not fight.

To learn more

For more information about topics covered in this article, go to The Sun's Web site, SunSpot, at www.sunspot.net/news/

Pub Date: 4/09/98

GRAPHIC: COLOR PHOTO, ASSOCIATED PRESS, No deal: Steven F. Goldstone, RJR-Nabisco's chairman and CEO, denounces President Clinton and says the the \$ 368 billion settlement is dead.; PHOTO 1, ASSOCIATED PRESS, Camels for sale:

The Baltimore Sun, April 9, 1998

Steven F. Goldstone, RJR-Nabisco's chairman and chief executive officer, displays a pack of Camels at a news conference announcing an end to talks with Congress over a tobacco settlement.; PHOTO 2, ASSOCIATED PRESS, Sponsor: The \$ 516 billion settlement passed by Sen. John McCain's committee angered the tobacco industry.

LOAD-DATE: April 10, 1998

LEVEL 1 - 45 OF 166 STORIES

Copyright 1998 Times Publishing Company
St. Petersburg Times

April 3, 1998, Friday, 0 South Pinellas Edition

SECTION: NATIONAL; Pg. 1A

LENGTH: 1236 words

HEADLINE: As Clinton returns, foes who smelled victory taste defeat

BYLINE: DAVID DAHL; BILL ADAIR

DATELINE: WASHINGTON

BODY:

There's nothing like a little trip overseas to clear the air.

When he left for Africa 12 days ago, President Clinton looked as if he were heading out of town with a posse close behind. His sex-lies-and-harassment scandal overshadowed all else. Congress was ignoring his agenda. Washington's wise men and women saw it as only a matter of time before the country caught on to his foolishness.

And now?

Clinton is returning with a huge legal burden lifted from his shoulders, his political standing riding high and his opponents in the Republican Party in disarray. For much of the last week and a half, Americans have seen television and newspaper images of their president warmly greeted by African leaders and touring the continent of giraffes and elephants.

Back home, his allies were doing his dirty work. U.S. District Judge Susan Webber Wright's decision Wednesday to throw out Paula Jones' sexual harassment lawsuit gave traction to claims by Clinton partisans that all of the allegations facing him - including the obstruction of justice case still being investigated by independent counsel Kenneth Starr - are bogus.

"It was Kenneth Starr's choice to build his case on the foundation of the Paula Jones case," said Sen. Robert Torricelli, a New Jersey Democrat. "That no longer exists."

St. Petersburg Times, April 3, 1998

Democrats stepped up their attacks on Starr as a partisan, while hoping that the GOP-led Congress will be afraid to begin impeachment proceedings because of the Jones decision and the continued staying power of Clinton. But most GOP lawmakers say Starr's inquiry can proceed, and House Speaker Newt Gingrich told the Associated Press that his team is still preparing for some sort of public hearings on Starr's case if he produces a report.

Even his sharpest critics, though, agree that Wright's decision removes one of the two big legal clouds for Clinton. He can now, his partisans hope, return to his much discussed legacy.

On that front, too, his agenda moved forward while he was thousands of miles away.

Anti-tobacco legislation cleared the Senate Commerce Committee this week, the first big hurdle for what could be Clinton's signature accomplishment of his second term.

The bill is not as tough as Clinton wanted, but White House aides were glad to see the committee approve the bill with such a lopsided vote, 19-1. They had expected five or six senators to oppose it.

"This will provide real momentum," said Elena Kagan, Clinton's deputy assistant for domestic policy.

Clinton has coyly let Congress take the lead on tobacco legislation. He did not endorse the initial settlement between the tobacco industry and 40 states. Instead, he listed five general principles that he wanted a tobacco bill to meet.

Clinton aides say they wanted to avoid a rerun of the debacle on national health care policy. They wanted Congress to write its own bill so members would have a stake in it and be more likely to pass it.

"We have learned our lesson," Kagan said. "We didn't want to send up our legislation."

That strategy appears to be working. Sen. John McCain, R-Ariz., chairman of the Commerce Committee, has become the prime sponsor of the bill and managed to get a surprising amount of bipartisan support.

While Clinton's biggest agenda item is heading forward in the Senate, the House is handing him another victory - a political victory that could pay dividends in the fall congressional elections. The word of the day is disarray.

A series of decisions by Gingrich has angered members of his party. Fiscal conservatives are upset that Gingrich and his GOP leadership team loaded up a transportation bill with more than 1,400 pork barrel projects. Republican political reformers were outraged that he derailed serious campaign finance legislation this week. Others are concerned he might mishandle potential impeachment proceedings by making the hearing look partisan.

The billions of dollars in special projects in the transportation bill gave Clinton the opportunity to scold Republicans for busting the balanced budget

St. Petersburg Times, April 3, 1998

deal he made with Congress a few months ago.

"The leadership is not making very good decisions, and the worst is campaign finance reform and ignoring the budget agreement by trying to spend money we don't have," said moderate Republican Rep. Chris Shays of Connecticut.

"We are giving him a gift with which to demagogue and kind of blur the lines of the differences between Republicans and Democrats," Shays said in an interview. "What's happening now is that the heart and core of what binds us together as Republicans is fiscal responsibility, and they are jeopardizing that."

The House passed the bill by a vote of 337-80, with loud complaints from deficit-conscious Republicans such as Budget Committee Chairman John Kasich of Ohio and Rep. Dan Miller of Bradenton. Miller joked that with some 23 bike paths, 15 pedestrian walkways and hundreds of miles of roads in lawmakers' districts, the bill has "more pork than a Memphis barbecue."

U.S. Rep. Charles Canady, R-Lakeland, worries about another matter: the notion floated by Gingrich that the speaker should set up a special, select committee to hear the allegations presented by Starr. Canady is a member of the House Judiciary Committee, and he says that panel should hear the case.

A Gingrich-appointed panel "would be attacked as an attempt to stack the deck in a partisan manner," Canady said.

"We have a responsibility to ensure that the process that is followed is a process that the American people will have confidence in and a process that the American people will trust. Creating a select committee would not do that," Canady said.

Gingrich himself is considering a bid for president and is heading off on a tour to promote a new book. Even though he has not announced plans to step down, two of his lieutenants are campaigning to replace him, causing further disruption in the House.

Meantime, Congress has yet to act on Clinton's call to increase the minimum wage, extend Medicare to people 55 or older, or protect consumers from the impersonal decisions of health maintenance organizations. Democrats could benefit from the Republicans' inaction, by claiming that this is a "do nothing" Congress.

"This is a party in disarray," said House Democratic leader Richard Gephardt of Missouri. "They are not running the House properly, they are not getting things done for the American people, and they are not even willing to take up an agenda of realistic concerns that we think we've brought to the table."

Political newsletter editor Stuart Rothenberg said Republicans are "stumbling through" this year's session, avoiding a direct confrontation with Clinton while making noise about a handful of conservative issues, such as tax reform, to keep GOP voters interested enough to head to the polls.

He predicts Democrats might pick up a few seats this November, which would be an unusual development in a midterm election for the president's party.

St. Petersburg Times, April 3, 1998

Given Clinton's up and down history, though, Rothenberg was cautious about reading too much into the snapshot of the day after the Paula Jones case was dismissed.

"Certainly he's coming back on a PR high, which will continue for the next two days or so."

GRAPHIC: BLACK AND WHITE PHOTO; COLOR PHOTO, Associated Press; Newt Gingrich; President and Hillary Rodham Clinton look out from the Door of No Return at Goree Island's Slave House off Senegal, where he delivered a tribute to African-Americans.

LANGUAGE: ENGLISH

LOAD-DATE: April 3, 1998

LEVEL 1 - 46 OF 166 STORIES

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The Baltimore Sun

April 2, 1998, Thursday, FINAL EDITION

SECTION: TELEGRAPH (NEWS), Pg. 1A

LENGTH: 826 words

HEADLINE: Senate panel votes, 19-1, for bill to restrict tobacco; Backers include those from states that grow it

BYLINE: Jonathan Weisman, SUN NATIONAL STAFF

BODY:

WASHINGTON -- A key Senate committee overwhelmingly approved landmark legislation last night to create the nation's first tobacco control policy, giving a powerful push to a bill that could radically change the smoking habits of the nation.

The commerce committee boldly stared down warnings from tobacco companies that they would challenge the bill in court as unconstitutional.

The panel's 19-1 vote provided momentum to a far-reaching measure that only weeks ago seemed moribund.

The bill would increase the cost of a pack of cigarettes by at least \$ 1.10, restrict the advertising and marketing of tobacco products, pay for smoking-cessation and anti-tobacco education programs and punish tobacco companies if teen-age smoking is not reduced sharply enough.

"This is one of those rare occasions we have to craft legislation that will resonate and that will have a profound impact on our country and on our young people," said Sen. Olympia J. Snowe, a moderate Republican from Maine.

John McCain, the Arizona Republican who chairs the Commerce, Science and Transportation Committee, said he expected the full Senate to take up the

The Baltimore Sun, April 2, 1998

legislation by late spring.

In the committee, the bill received the backing of tobacco foes and tobacco allies alike. Senate Majority Leader Trent Lott, who could ultimately decide the bill's fate, weighed in favorably. Only Missouri's John Ashcroft, a potential GOP presidential candidate in 2000, voted no.

"This gives the process real momentum," said Elena Kagan, a White House deputy domestic policy adviser who is working on the tobacco issue. "We expect that sense of momentum in the Senate will drive action in the House as well."

Committee members tiptoed down a perilous path, between senators who wanted to toughen the measure and those who asserted that the legislation is already too punitive.

The future of the tobacco bill still remains clouded by thorny issues that must be grappled with on the Senate floor, ranging from attorneys' fees to export restrictions. The Senate has yet to decide even how to spend the half-trillion-dollar windfall expected to be produced by new tobacco taxes over 25 years.

"It's appropriate we are beginning this process on April Fool's Day," said Sen. Wendell H. Ford, a Democrat from the tobacco state of Kentucky. "The more I look at this, the more I think we're fooling ourselves that we can reach a comprehensive settlement."

But supporters were buoyed by the vote. Although committee members laid out their differences, they were careful not to push any drastic changes to the bill that could derail its progress. "We can find a way to answer the calls of the public that we act," predicted Sen. Ted Stevens, the influential Alaska Republican.

The legislation would raise at least \$ 516 billion over 25 years through a higher cigarette tax that would reach \$ 1.10 by 2003. The tobacco industry put the price tag at \$ 574 billion.

Through price increases and sweeping restrictions on advertising and marketing, proponents hope to reduce youth smoking by 60 percent over the next decade. The legislation puts teeth into that goal by threatening to levy penalties of up to \$ 3.5 billion a year on companies that fail to meet reduction targets.

Those penalties have left tobacco companies fuming. The deal they reached with 40 state attorneys general in June -- including J. Joseph Curran Jr. of Maryland -- was far less severe. It envisioned payments of \$ 368 billion, in exchange for immunity against class action lawsuits and punitive damages.

The current legislation would raise far more money and offer the tobacco companies far less legal protection. Instead of the immunity they sought, the companies would receive only a \$ 6.5 billion annual cap on legal damages that might be levied against them.

A Morgan Stanley analysis provided by tobacco industry representatives concluded that the deal would bankrupt R. J. Reynolds Tobacco Co., the country's second-largest tobacco company, and gravely undermine the viability of other

The Baltimore Sun, April 2, 1998

companies.

Price increases mandated in the bill would cut total sales by an estimated 57 percent over five years. But because the annual industry payments would not change with that shrinking volume, the tax per pack would rise to \$ 1.77, according to David Adelman, a tobacco analyst at Morgan Stanley.

"They have left this carefully crafted, well-balanced compromise in tatters," fumed Scott Wise, a lawyer for RJR Nabisco who helped craft the original deal.

In a sharply worded letter to McCain, J. Phil Carlton, a tobacco industry lawyer, promised to tie up the legislation in court.

Indeed, some senators, even those who voted for the legislation in the committee, warned that the curbs on advertising and marketing are likely an unconstitutional infringement of free speech. Under the original deal, the companies had agreed to waive their constitutional rights.

Pub Date: 4/02/98

GRAPHIC: PHOTO, ASSOCIATED PRESS, Warm up: Committee Chairman John McCain (center) confers with Avan Schlager (left), the panel's minority counsel, and Sen. Wendell H. Ford of Kentucky. Ford, a tobacco state senator, later voted for the bill.

LOAD-DATE: April 3, 1998

LEVEL 1 - 47 OF 166 STORIES

Copyright 1998 The Dallas Morning News
THE DALLAS MORNING NEWS

April 2, 1998, Thursday, HOME FINAL EDITION

SECTION: BUSINESS; Pg. 1D

LENGTH: 662 words

HEADLINE: Tobacco bill clears panel despite pleas for delay;
Senate group votes to boost cigarette prices; industry may try to block further action

BYLINE: George Rodrigue, Washington Bureau of The Dallas Morning News

DATELINE: WASHINGTON

BODY:

WASHINGTON - By an overwhelming bipartisan vote, the Senate Commerce Committee on Wednesday approved a landmark tobacco-control bill that could boost cigarette prices by \$ 2.50 per pack and, supporters hope, cut teen smoking rates by 60 percent.

THE DALLAS MORNING NEWS, April 2, 1998

The issue goes next to the full Senate, where leaders could set a floor vote before June.

But there were signs Wednesday that the industry itself might try to block further action, having lost control of a political process it started.

The House has taken no action so far, and its leadership's close political ties to the industry worry tobacco critics. Others said they hoped a strong Senate vote would force the House into line before fall elections.

"We have a lot of momentum," said Elena Kagan, who has been handling tobacco politics for the White House.

Only Sen. John Ashcroft, R-Mo., dissented, saying the bill is too lenient because it gives cigarette makers lawsuit relief that other corporations don't enjoy.

The Senate bill is much tougher than a proposal from last summer. The industry started the current process by negotiating a \$ 368.5 billion "global" litigation settlement with state and private lawyers, then sought Congress' blessing. The deal included huge repayments of cigarette-related health-care costs and broad limits aimed at teen smoking.

Instead of accepting the agreement, many lawmakers and anti-smoking advocates sought more concessions.

The committee's version would cost the industry - and ultimately smokers, who would pay higher prices - at least \$ 506 billion over 25 years and perhaps as much as \$ 600 billion.

It strengthens Food and Drug Administration control of tobacco and omits many lawsuit protections that were in the initial deal.

But it meets one of the industry's key goals: predictable civil litigation damages.

Regardless of the types or number of lawsuits lost or the size of jury awards, the industry would pay a flat \$ 6.5 billion a year for distribution to plaintiffs - no more and no less.

The industry has protested that the bill could bankrupt some companies and create an uncontrollable cigarette black market. It has vowed a court fight if the bill becomes law.

Supporters wouldn't predict passage of the bill. "This is only the first round, and there are many rounds to fight," said Sen. John McCain, R-Ariz., the committee's chairman. "We have to keep some perspective."

But few legislators were heeding the industry's threats Wednesday. Mr. Ashcroft called the firms "merchants of death" and said the bill was designed to ensure their continued ability to sell "a product that is injurious to public health."

Legislators and aides said tobacco lobbyists - up to and including company presidents - were pleading for changes or delays before Wednesday's meeting

THE DALLAS MORNING NEWS, April 2, 1998

but apparently getting nowhere.

Sen. Ted Stevens, R-Alaska, said he told one firm's president, "I believe that this bill has got to get to the Senate floor."

The tobacco firms "don't have any friends up here," said a McCain aide. Added Sen. Byron Dorgan, D-N.D.: "This committee does not need the approval of the tobacco industry."

A crucial goal of the bill is to force the cost of smoking sharply higher. Some studies show that teens are more sensitive than adults to cigarette prices. Every 10 percent increase in sales prices, those studies indicate, could cut teen smoking by 7 percent.

The bill would force tobacco firms to make taxlike payments to the government of 65 cents per pack in 1999 and \$ 1.10 in 2003.

Industry officials say that could boost retail prices by \$ 2.50.

Public health officials fear the increase would not reach \$ 1.50.

One problem, supporters acknowledge, is that some of the bill's advertising and marketing restrictions probably would be struck down by courts as violations of the firms' free-speech rights. They hope to win voluntary agreement to those restrictions, but industry leaders so far are vowing to withhold that.

LANGUAGE: ENGLISH

LOAD-DATE: April 3, 1998

LEVEL 1 - 48 OF 166 STORIES

Copyright 1998 Denver Publishing Company
The Denver Rocky Mountain News(Denver, Co.)

April 2, 1998, Thursday,

SECTION: NEWS/NATIONAL/INTERNATIONAL; Ed. F; Pg. 37A

LENGTH: 398 words

HEADLINE: SENATE PANEL OKS TOBACCO BILL;
ANTI-SMOKING PACKAGE FAR STIFFER THAN PREVIOUS DEAL

BYLINE: Judy Holland; Hearst Newspapers

DATELINE: WASHINGTON

BODY:

The Senate Commerce Committee Wednesday night approved sweeping tobacco legislation that would require cigarette makers to pay more than \$ 500 billion over the next 25 years and crack down on underage smoking. "This is a rare occasion for Congress to craft legislation that will resonate and have a profound impact on our country and on our young people," said Sen. Olympia J. Snowe, R-Maine, said during debate on the measure.

The Denver Rocky Mountain News (Denver, Co.) , April 2, 1998

The legislation, sponsored by the committee chairman, Sen. John McCain, now goes to the full Senate for a vote. McCain, R-Ariz., said the time was "ripe" to move on anti-smoking legislation and that Senate leaders have indicated they will quickly bring the measure to a vote. "I do believe that the opinion amongst the leadership is this is not the kind of thing you want to put off until September," McCain said. The bill would add a \$ 1.10-per-pack fee on cigarette companies; place a \$ 6.5 billion annual cap on legal damages stemming from lawsuits; impose penalties on cigarette makers if the number of underage smokers doesn't decline 60 percent in a decade; and restrict cigarette advertising. The Clinton administration said Wednesday that the measure would raise \$ 516 billion over 25 years, making it a much stiffer package than the \$ 368.5 billion deal the tobacco industry struck in June with attorneys general from 40 states. That deal must be approved by Congress. Scott Wise, an attorney for RJR Nabisco Co., the parent of R.J. Reynolds Tobacco Co., said the industry was "very, very disappointed about this process and that we had no role" in shaping McCain's bill. He said the industry "couldn't possibly support" the bill because it costs too much and doesn't include the "linchpin" that the June settlement proposal does - liability protection against lawsuits. "The liability is the heart of the matter," Wise said. "They have left this carefully crafted, well-balanced compromise in tatters." While some members of the Commerce Committee jockeyed to tinker with the legislation, McCain fought to steer the bill clear of any amendments. The White House was optimistic the bill would be approved by Congress. "This gives the process real momentum," said Elena Kagan, President Clinton's deputy domestic policy adviser. "We expect the sense of momentum in the Senate will drive action in the House as well."

LANGUAGE: ENGLISH

LOAD-DATE: April 7, 1998

LEVEL 1 - 49 OF 166 STORIES

Copyright 1998 Extel Financial Limited
Extel Examiner

April 2, 1998, Thursday

SECTION: Government Information; Other

LENGTH: 346 words

HEADLINE: U.S. Senate Commerce Committee passes comprehensive tobacco bill

BODY:

WASHINGTON (AFX) - The Senate Commerce Committee passed a comprehensive tobacco bill, clearing a major hurdle toward passage in the Senate. The bill was passed by an overwhelming majority of 18 to 1. Senator Ernest Hollings was not able to vote because he was detained on the Senate floor to debate budget legislation.

The bill raises cigarette prices by 1.10 usd per pack over five years, and costs the industry 506 bln usd over 25 years. The companies' liability is capped at 6.5 bln usd annually.

The industry must meet stiff teenage smoking reduction targets and its products and ingredients will be regulated by the Food and Drug Administration.

Extel Examiner, April 2, 1998

Senate Commerce Committee Chairman John McCain said he has met with Senate Majority Leader Trent Lott and Democratic leader Tom Daschle, who said they are eager to move the legislation to the floor in May.

There are still stumbling blocks to the bill making it to the floor. The leadership from either party could block the legislation, analysts said.

However, Elena Kagan, a senior White House policy advisor, said the Clinton administration will be working with the Senate leadership to urge the leadership to move the legislation to the floor for a vote as soon as possible.

"We want to work out a process to get this to the floor... this is the President's number one priority," Kagan said.

Senate Republican Whip Don Nickles said Republicans have been instructed to spend the Easter recess researching the tobacco bill and to return with an opinion about whether they can support the legislation. He said the bill has to pass by June, or it will fail this year.

Congress leaves on a two-week recess at the end of the week.

blv/jsa

LANGUAGE: ENGLISH

LOAD-DATE: April 3, 1998

LEVEL 1 - 50 OF 166 STORIES

Copyright 1998 The National Journal Group, Inc.
Health Line

April 2, 1998

SECTION: TOBACCO ROAD

LENGTH: 727 words

HEADLINE: SETTLEMENT: SENATE COMMERCE COMMITTEE PASSES MCCAIN BILL

BODY:

In a 19-1 vote, the Senate Commerce Committee yesterday approved legislation "that lays the framework for the nation's first comprehensive antismoking policy." The passage is a victory for committee chair Sen. John McCain (R-AZ), who sponsored the bill and led negotiations over its provisions during the past few weeks. The bill would raise the price of cigarettes by \$1.10 per pack, require \$600 billion in payments from the industry over 25 years, restrict tobacco advertising and deny tobacco companies of most of the legal protections they desire (see AHL 3/30) (Taylor, Wall Street Journal, 4/2). The Richmond Times-Dispatch reports that McCain's leadership was key in getting the bill through the committee in one day. "McCain said the delicate balance he had reached on language in the bill in negotiations with committee members last week had to be maintained. So he opposed any amendment that would upset that balance, whether it favored or hurt tobacco manufacturers," the Times-Dispatch reports.

DON'T ROCK THE BOAT

But one amendment McCain allowed to be attached to the bill

Health Line, April 2, 1998

"gave a new incentive to reduce tobacco sales to youths." Under the amendment, industry payments would be gathered "into a pool to be awarded to states that achieve 95% compliance in restricting tobacco sales to youths." Sen. Olympia Snowe's (R-ME) measure outlined "in a general resolution a list of federal programs that payments from the bill could fund" (Hardin/Klein, 4/2). Snowe suggested "various uses," including National Institutes of Health programs, farmers' assistance, Medicare reimbursement and research on black-lung disease (Wall Street Journal, 4/2). The New York Times reports that "in deference to the chairman," Sens. Ron Wyden (D-OR) and Sam Brownback (R-KS) withdrew respective amendments that would stiffen industry penalties for noncompliance on youth smoking and cap the fees for attorneys who sue the industry (Rosenbaum, 4/2). In addition, CongressDaily/A.M. reports that an amendment by Sen. Daniel Inouye (D-HI) "to establish a trust fund for asbestos victims was approved."

WE SAID DON'T ROCK THE BOAT

The key defeat yesterday was on a move by Sen. Byron Dorgan (D-ND) "to strike the bill's annual industry liability limits." The proposal was defeated 17-3, with only Sens. John Ashcroft (R-MO) and Jay Rockefeller (D-WV) joining Dorgan (Koffler, 4/2). Ashcroft, who referred to tobacco companies as "merchants of death," was the only nay vote on the whole bill. Sen. Wendell Ford (D-KY), whose state is a major tobacco producer, said he would not support any bill that "bankrupts an industry and makes any farmer (protection) provision a hollow victory for me -- if there is no industry left to fund them" (Times-Dispatch, 4/2). Although the bill contains \$28.5 billion in farmer subsidies, Ford said it was unsatisfactory and filed 47 amendments. "If my farmers are not taken care of, this carpet is going to turn red," he said. Ford voted to approve the final version of the bill in committee (Connolly/Torry, Washington Post, 4/2).

WHERE TO?

Following yesterday's action, McCain said, "There's no doubt this is only the first round, and there are many rounds to fight." He predicted a "huge fight" over how the settlement funds are to be allocated (Times-Dispatch, 4/2). Inouye summed up the sense of the committee in praising McCain for his work: "(U)nder your leadership, the committee has done the impossible. Simply put, it was presidential material" (CongressDaily/A.M., 4/2).

MORE REACTION

White House Deputy Domestic Policy Adviser Elena Kagan said, "This vote gives the bill lots of momentum, so we can improve upon it when it reaches the Senate floor" (Goldreich, Washington Times, 4/2). The New York Times notes that former U.S. Surgeon General C. Everett Koop "and other public health authorities oppose the measure because they say it is too generous to the tobacco industry." On the other side of the issue, cigarette makers "say the measure is unacceptable because it would force companies into bankruptcy and lead to a contraband market in cigarettes" (4/2).

Health Line, April 2, 1998

LANGUAGE: ENGLISH

LOAD-DATE: April 2, 1998

LEVEL 1 - 51 OF 166 STORIES

Copyright 1998 The News and Observer
The News and Observer (Raleigh, NC)

April 2, 1998 Thursday, FINAL EDITION

SECTION: NEWS; Pg. A8

LENGTH: 609 words

HEADLINE: Senate panel quickly passes tobacco-regulation bill

BYLINE: KNIGHT RIDDER NEWSPAPERS

BODY:

WASHINGTON -- Congress took a first step toward curbing America's tobacco habit Wednesday, as the Senate Commerce committee voted 19-1 to pass legislation aimed at sharply cutting youth smoking and tightening regulation of cigarettes.

The bill would force up the price of a pack of cigarettes by \$ 1.10 over the next five years, impose penalties on the cigarette companies if the number of teenage smokers did not fall to specified levels and limit the civil liability of the companies to \$ 6.5 billion a year. It also would require the manufacturers to accept strict limits on their advertising and marketing practices in order to retain the liability ceiling.

Money would be set aside to buy out tobacco farmers who wanted to get out of the business and to help communities that would suffer economically if fewer people smoked.

The White House is expected to play a key role in fine-tuning the bill, which Senate leaders hope to bring to a vote by the full Senate by June.

"This provides great momentum. Tobacco is now the president's first priority," said Elena Kagan, the Clinton administration's representative for tobacco.

Wednesday's committee debate was surprisingly brisk, and only minor changes were made to the bill that Sen. John McCain, R-Ariz., crafted during nonstop negotiations the past week. The committee left some issues to be resolved by the full Senate.

The House has not considered any tobacco legislation and will likely vote on whatever the Senate produces.

"We have a long way to go. But we now have a framework to consider," said McCain, chairman of the Commerce committee. He added that time is of the essence.

The News and Observer (Raleigh, NC) April 2, 1998 Thursday,

The committee debate did hit a snag over the issue of punishing tobacco companies for advertising to children in other countries. That provision was dropped from the bill.

Sens. Trent Lott, R-Miss., and Don Nickles, R-Okla., will now lead discussions of possible adjustments with the White House and the Senate leadership in both parties. Their goal is to craft a bill that is guaranteed at least 70 votes and to have the Senate vote on it by June 1, several senators said.

Members of the commerce committee said they want the tobacco bill to be law well before this November's elections, when a third of the Senate and the entire House will be up for re-election.

The tobacco industry was displeased with the committee's bill and issued statements saying it would almost certainly challenge in court the bill's restrictions on advertising, if the legislation became law. The companies claimed it is a violation of their freedom of speech.

In the past, members of the committee have worried that such a lawsuit would undermine their efforts to shield the eyes of children from cigarette ads, but the concerns seem to have faded by Wednesday's end.

"The problem is that the tobacco companies have said so many things and changed their mind," McCain said.

Kagan, of the White House, was more blunt.

"They do not have a veto over what we do," she said.

During Wednesday's debate, McCain effectively turned aside several major challenges. These included amendments that would kill the \$ 6.5 billion cap on the industry's legal payouts and lower the \$ 1.10-per-pack increase.

One important issue still unresolved is how the money the tobacco industry would pay to the government - \$ 506 billion over 25 years - would be spent. The committee approved a suggestion that it be distributed to health research, Medicare, tobacco farmers, and a host of pet projects including aiding sick coal miners.

But these suggestions can be ignored and the issue will have to be hashed out on the Senate floor.

LANGUAGE: ENGLISH

LOAD-DATE: April 2, 1998

LEVEL 1 - 52 OF 166 STORIES

Copyright 1998 The News and Observer
The News and Observer (Raleigh, NC)

April 2, 1998 Thursday, FINAL EDITION

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The News and Observer (Raleigh, NC) April 2, 1998 Thursday,

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LANGUAGE: ENGLISH

LOAD-DATE: April 2, 1998

LEVEL 1 - 53 OF 166 STORIES

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Newsday (New York, NY)

April 2, 1998, Thursday, ALL EDITIONS

SECTION: NEWS; Page A07

LENGTH: 833 words

HEADLINE: TOBACCO BILL GAINS / SENATE COMMITTEE PASSES CIGARETTE CRACKDOWN, 19-1

BYLINE: By Harry Berkowitz. STAFF CORRESPONDENT

DATELINE: Washington

BODY:

Newsday (New York, NY), April 2, 1998

Washington - A half-trillion-dollar bill to crack down on teen smoking and tobacco companies took a major step forward last night as the Senate Commerce Committee adopted it by a huge margin despite fears the industry will challenge restrictions on cigarette advertising.

The committee, designated by the Republican leadership to create a bipartisan anti-smoking bill, voted 19 to 1, including a "yes" proxy vote by Senate Majority Leader Trent Lott (R-Miss.), to send it to the Senate floor. A fight there is expected next month, not only over the provisions but also over how to spend the \$516 billion the companies would be required to pay over 25 years.

"This gives the process real momentum," said Elena Kagan, a White House adviser who was in the audience at the all-day hearing. "We expect that sense of momentum in the Senate will drive action in the House as well."

Even several senators who wanted to add tougher provisions against the industry - but failed - voted in favor of the bill, which aims to cut teen smoking by 60 percent over 10 years.

"I think this bill is real progress for the public health and the children of America," said Sen. Ron Wyden (D-Ore).

Sen. Wendell Ford (D-Ky.), who acknowledged that his view may be "suspect" because he is from a tobacco state, said the bill is too tough and threatens to bankrupt tobacco companies but then voted for it anyway.

Only John Ashcroft (R-Mo.), who insisted that if the tobacco industry gets any kind of liability protection then so should charitable organizations and biomaterial companies, and who is said to have presidential ambitions, voted no.

Tobacco companies, which signed a \$368.5-billion anti-smoking deal with dozens of state attorneys general in June, have threatened to walk away from the agreement and challenge the advertising restrictions as unconstitutional, saying the bill goes too far in toughening the original provisions. In a letter to Sen. John McCain (R-Ariz.), the committee chairman, industry representative J. Philip Carlton said the bill contains "illegal, punitive and fundamentally unsound provisions."

In addition to higher costs and stiffer penalties if goals for cutting teen smoking are not met, the bill would remove the June deal's ban on class-action lawsuits and punitive damages in individual suits.

"Tobacco companies say they will take a walk," said Sen. John Rockefeller IV (D-W. Va.). "I don't think that's a very wise judgment on their part. The American people are fed up with the whole smoking thing."

Sen. John Breaux (D-La.), however, said that without the industry's support, advertising restrictions that include a ban on billboards and on human and cartoon characters such as the Marlboro Man and Joe Camel would be rejected by the Supreme Court.

The vote was an impressive victory for McCain who led weeks of intensive negotiations in drafting the bill and yesterday patiently fought back proposed amendments to make major changes - either to toughen it or weaken it.

Newsday (New York, NY), April 2, 1998

Those failed proposals included removing the bill's annual \$6.5-billion cap on lawsuit damages against the industry and raising a planned price increase on cigarettes to \$1.50 per pack. On the other side, Ford proposed lowering the cost of the bill to the industry. That also was voted down.

The companies had focused on trying to retain the liability limits in the June deal, which included bans on class-action lawsuits and punitive damages. But the bill eliminates those provisions. This week the companies have complained about the overall cost of the bill to the industry, the bill's plan to drive up cigarette prices by \$1.10 per pack over five years and beefed-up provisions to restrict ads and to give the Food and Drug Administration authority over tobacco products.

A Clinton administration representative said the Treasury Department had recalculated the cost of the bill to \$516 billion, up from the original estimate of \$506 billion. But he said the cost would not be so steep as to drive companies out of business or cut smoking so much that they cannot achieve revenue targets.

The committee sidestepped the question of how to spend the money, as McCain said that will be fought out among the White House and Republican and Democratic leaders when the bill gets to the Senate floor, where spending purposes other than the ones the Budget Committee passes this week will need a super majority of 60 votes.

"The spending issue will be a huge fight," McCain said. The committee passed a "sense of the Senate" provision urging that causes ranging from Medicare and anti-smoking programs to black-lung disease and child care be considered for sharing the funds.

Although Lott had recused himself from the committee debate because his brother-in-law, Richard Scruggs, is a class-action lawyer who has helped lead the fight against the industry, he decided to take part in the vote and wants to "see this move forward," a spokesman said.

LANGUAGE: English

LOAD-DATE: April 2, 1998

LEVEL 1 - 54 OF 166 STORIES

Copyright 1998 McClatchy Newspapers, Inc.
Sacramento Bee

April 2, 1998, METRO FINAL

SECTION: MAIN NEWS; Pg. A14

LENGTH: 482 words

HEADLINE: \$ 506 BILLION TOBACCO DEAL CLEARS FIRST COMMITTEE HURDLE IN SENATE

Sacramento Bee, April 2, 1998

BYLINE: Knight Ridder Newspapers

DATELINE: WASHINGTON

BODY:

Congress took a first step toward curbing America's tobacco habit Wednesday, as the Senate Commerce Committee voted 19-1 to pass legislation aimed at sharply cutting youth smoking and tightening regulation of cigarettes.

The committee's bill would raise the price of a pack of cigarettes by \$ 1.10 over five years, give the Food and Drug Administration broad power to control the ingredients of cigarettes, restrict cigarette advertising and cap the tobacco industry's annual legal damages at \$ 6.5 billion.

The White House is now expected to play a key role in fine-tuning the bill, which Senate leaders hope to bring to a vote by the full Senate before June.

"This provides great momentum. Tobacco is now the president's first priority," said Elena Kagan, the Clinton administration's representative for tobacco.

Wednesday's committee debate was surprisingly brisk, and only minor changes were made to the bill that Sen. John McCain, R-Ariz., crafted during nonstop negotiations during the past week. The committee left some issues to be resolved by the full Senate. The House has not considered any tobacco legislation and will likely vote on whatever the Senate produces.

"We have a long way to go. But we now have a framework to consider," said McCain, Commerce Committee chairman. He added that timing is crucial: "It's clear that we don't want this on the floor in September."

The committee debate did hit a snag over the issue of punishing tobacco companies for advertising to children in other countries. That provision was dropped from the bill.

Sens. Trent Lott, R-Miss., and Don Nickles, R-Okla., will now lead discussions of possible adjustments with the White House and the Senate leadership in both parties. Their goal is to craft a bill that is guaranteed at least 70 votes and to have the Senate vote on it by June 1, several senators said.

Congress, which will recess for two weeks beginning Friday, has a shortened session this year. Members of the committee said they want the tobacco bill to be law well before November's elections, when a third of the Senate and the entire House will be up for re-election.

The tobacco industry was displeased with the committee's bill and issued statements saying it would almost certainly challenge in court the bill's restrictions on advertising, if the legislation became law. The companies claimed it is a violation of their freedom of speech.

One important issue still unresolved is how the money the tobacco industry would pay to the government -- \$ 506 billion over 25 years -- would be spent.

Sacramento Bee, April 2, 1998

Lone dissenter Sen. John Ashcroft, R-Mo., offered amendments that would extend any legal protections that the tobacco industry got to the biomedical industry and to charities.

Said McCain: "This is outside the scope of this legislation. If we open this Pandora's box we will never finish this bill."

LANGUAGE: ENGLISH

LOAD-DATE: April 3, 1998

LEVEL 1 - 55 OF 166 STORIES

Copyright 1998 The Hearst Corporation
The San Francisco Examiner

April 2, 1998, Thursday; Second Edition

SECTION: NEWS; Pg. A-1

LENGTH: 716 words

HEADLINE: Tobacco bill gains new momentum in Senate

SOURCE: EXAMINER WASHINGTON BUREAU

BYLINE: JUDY HOLLAND(Examiner news services contributed to this report.)

DATELINE: WASHINGTON

BODY:

Giving a huge boost to federal efforts to reduce America's tobacco habit, the Senate Commerce Committee approved sweeping legislation that would require cigarette makers to pay more than \$ 500 billion over the next 25 years and crack down on teenage smoking.

"This is a rare occasion for Congress to craft legislation that will resonate and have a profound impact on our country and on our young people," Sen. Olympia Snowe, R-Maine, said during debate on the measure.

The legislation, sponsored by the committee chairman, Sen. John McCain, R-Ariz., passed its first major hurdle Wednesday night with the panel's approval. Next it will go to the full Senate for a vote. The House has yet to act on similar legislation, leaving the final shape and timing of the deal uncertain.

Still, McCain said the time was ripe to move on anti-smoking legislation. "I do believe that the opinion amongst the leadership is this is not the kind of thing you want to put off until September."

"This gives the process real momentum," said Elena Kagan, President Clinton's deputy domestic policy advisor. "We expect the sense of momentum in the Senate will drive action in the House as well."

The San Francisco Examiner, April 2, 1998

The bill would add a \$ 1.10-per-pack fee on cigarette companies, place a \$ 6.5 billion annual cap on legal damages stemming from lawsuits, impose penalties on cigarette makers if the number of underage smokers doesn't decline 60 percent in a decade, and restrict cigarette advertising.

Much costlier for firms

The Clinton administration said Wednesday that the measure would raise \$ 516 billion over 25 years, making it a much costlier package than the \$ 368.5 billion deal the tobacco industry struck in June with attorneys general from 40 states, including California. That deal must be approved by Congress.

Scott Wise, an attorney for RJR Nabisco Co., the parent of R.J. Reynolds Tobacco Co., said the industry was "very, very disappointed about this process and that we had no role" in shaping McCain's bill.

Wise said the industry "couldn't possibly support" the bill because it costs too much and doesn't include the linchpin of the June settlement proposal, liability protection against lawsuits.

"The liability is the heart of the matter," Wise said. "They have left this carefully crafted, well-balanced compromise in tatters."

Without industry cooperation, several lawmakers on the committee noted that it would be hard to enforce several provisions of the bill, such as a ban on many forms of tobacco advertising and fines on companies for failure to reduce youth smoking.

While some members of the Commerce Committee tried to tinker with the legislation, McCain fought to steer the bill clear of any amendments.

One change accepted by the committee minutes before the final vote would give financial aid to tobacco farmers and landowners injured if the legislation prompts a lower demand for the crop.

Sole negative vote

Sen. John Ashcroft, R-Mo., unsuccessfully tried to remove the \$ 6.5 billion annual ceiling on the industry's civil liability. Ashcroft said he was concerned about Congress imposing "a cap that would cut off people's rights to collect compensatory damages."

Ashcroft was the only member of the Commerce Committee to vote against the bill Wednesday night.

Earlier, Sen. Wendell Ford, D-Ky., failed to lower the cost the legislation imposed on the cigarette industry. Ford said he was "astonished at the price tag of the bill," saying it would hurt tobacco farmers and bankrupt the industry.

But McCain said he wasn't worried about what tobacco firms think of the legislation.

"I can't be concerned about them," he said, adding he doubts the industry would go bankrupt, as some of the companies contend.

The San Francisco Examiner, April 2, 1998

Many lawmakers, particularly Democrats, say Congress doesn't need the industry's consent to discourage teenage smoking in other ways. Republican leaders also have balked this election year at granting legal protection to an industry they believe lied for years about encouraging teens to smoke.

Sen. Byron Dorgan, D-N.D., said, "The message coming from this room is that this committee doesn't seek or need the consent of the tobacco industry" to pass legislation.

SEE ALSO SIDEBAR (TOBACCO BILL)

LANGUAGE: English

LOAD-DATE: April 03, 1998

LEVEL 1 - 56 OF 166 STORIES

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April 02, 1998, Thursday, Final Edition

SECTION: A SECTION; Pg. A01

LENGTH: 1176 words

HEADLINE: Tobacco Bill Clears Senate Panel; \$516 Billion Measure Hikes Fees, Restricts Ads, Limits Liability

BYLINE: Ceci Connolly; Sandra Torrey, Washington Post Staff Writers

BODY:

The Senate Commerce Committee voted overwhelmingly yesterday to establish the nation's first comprehensive tobacco policy, a tough measure that aims to reduce youth smoking through steep cigarette price increases and harsh restrictions on sales and marketing.

The 19 to 1 vote represented a major step forward in the long, slow march to resolve an onslaught of lawsuits against the embattled industry and tackle the nation's leading cause of preventable death. It was the first action by Congress since the opposing factions in the fight over tobacco signed an unprecedented agreement last June.

"This is the crossing of the threshold," said David A. Kessler, the former Food and Drug Administration commissioner who first proposed regulating cigarettes like a drug. "Committee Chairman John McCain (R-Ariz.) and his colleagues have broken the hold the industry has had over the Congress."

Still, the real fight has yet to begin.

Although the legislation grants some of the legal protections the industry sought, company executives are threatening to fight the plan in court if it is not amended to their liking.

The Washington Post, April 02, 1998

Saying the bill "contains a number of illegal, punitive and fundamentally unsound provisions," tobacco lobbyist J. Phil Carlton predicted McCain's bill could revitalize the black market or even bankrupt some companies. Tobacco company stock prices dropped at the end of the day yesterday.

Tobacco industry opponents complain the bill does not go far enough in penalizing the industry or improving public health. They hope to abolish all civil liability protections and raise the bill's price tag.

Indeed, no one spoke well of the document, not even its primary author.

"It is by no means perfect," said McCain, who spent the past several weeks horse-trading with his colleagues, White House officials and anti-smoking advocates. "However, our task was to craft a bill that reflects the best possible consensus."

In broad terms, the 400-page bill would impose a fee of \$ 1.10 on every pack of cigarettes over the next five years, restrict tobacco advertising and marketing, limit the industry's civil liability to \$ 6.5 billion a year and exact additional payments from the companies if teenage smoking does not decline by 60 percent in 10 years. The committee estimates that it will cost the industry about \$ 516 billion over the next 25 years.

Committee members acknowledged that several of the most contentious issues would probably have to be revisited, such as precisely how much legal relief to give the industry, whether the proposed advertising restrictions are constitutional and how much to pay lawyers who filed lawsuits against the industry.

For instance, White House officials say they plan to fight on the Senate floor for stronger penalties against companies that fail to significantly reduce teenage smoking.

In yesterday's day-long session, McCain beat back virtually every noteworthy amendment, convincing committee members it was better to send a flawed version to the full Senate than no version. Known for his independent streak, McCain showed no favoritism in his no-amendments strategy.

Sen. John F. Kerry (D-Mass.) failed to raise the price increase to \$ 1.50 per pack, while Sen. Wendell H. Ford (D-Ky.) lost his bid to reduce the annual payments by tobacco companies. An amendment eliminating the \$ 6.5 billion liability cap failed, as did several attempts to grant similar protections to other industries, such as biomedical companies.

And still to be settled is a dispute over whether to impose fees, require cigarette warning labels and take other measures to reduce youth smoking overseas.

The fiercest debate in a cordial day of haggling came over the question of whether Congress needs to bargain with cigarette makers to extract advertising concessions and back penalties if teenage smoking is not brought down to acceptable levels.

"I have no sympathy for the people that sell these products," said Sen. John Breaux (D-La.), who said his mother and father-in-law died of lung cancer.

The Washington Post, April 02, 1998

However, Breaux said he thinks the ad restrictions are unconstitutional and can only be gotten through deal-making with the industry. "We should not push them so far we lose these very important portions of the bill."

Sen. Ernest F. Hollings (D-S.C.) said that "whether some up here like it or not, the tobacco companies are part of this process."

But experts on health issues such as Kessler and Matthew Myers, head of the National Campaign for Tobacco-Free Kids, argue that restrictions can be written narrowly enough to withstand legal challenges.

Ford, a tobacco ally who filed 47 amendments, warned that even though the bill contains \$ 28.5 billion to help ease the impact on tobacco farmers, he was not satisfied. "If my farmers are not taken care of, this carpet is going to turn red," he said.

Sen. John D. Ashcroft (R-Mo.), the lone dissenter, said he objected to the legal protections the bill would grant cigarette companies.

If the day did not resolve many of the thornier policy questions, it did provide a likely road map for the coming battle.

Elena Kagan, the White House deputy domestic policy adviser, said the committee included a "spectrum" of opinions similar to the entire Senate. "The fight in the larger Senate may echo this."

Not surprisingly, the real battles will come over money -- how much to pay lawyers, how much to charge companies and, most important, how to divvy the tobacco dividend.

McCain intentionally left open the question of how to spend the billions that could result from higher cigarette prices and company penalties.

"I fear that if we get into a food fight over distribution of funds," he said, it might derail the measure and should instead be left for President Clinton and a handful of congressional leaders to work out.

But that did not stop the lawmakers from devoting much time and energy to giving speeches on what they want to do with the money.

Some wanted money set aside for veterans; others worried about protecting miners afflicted with black lung disease. Senate Budget Committee Chairman Pete V. Domenici (R-N.M.) has said he wants the money given to Medicare.

"I guess the chairman wouldn't go for a flood control project?" joked Breaux.

In the end, the committee approved a nonbinding amendment that listed its favorite recipients, including child-care programs, smoking cessation efforts and cancer research.

McCain's bill now goes to the full Senate, although it is possible congressional leaders will continue to negotiate in private and offer a revised version in coming weeks. The House, meanwhile, has been unable to write tobacco legislation and may simply wait for the Senate bill.

The Washington Post, April 02, 1998

"Chances are better today than they were yesterday because of legislation coming out of the Commerce Committee," said Sen. Connie Mack (Fla.), a member of the GOP leadership. "Given how intricate this legislation is and how politically difficult it is, we still have a major task ahead of us."

GRAPHIC: Photo, ray lustig; Chart, The Washington Post, Comparing the Tobacco Plans The bill proposed by Sen. John McCain (R-Ariz.) would be tougher on the tobacco industry than the settlement agreed to last June. ORIGINAL SETTLEMENT PRICE INCREASE: No cigarette price increase. INDUSTRY PAYMENTS: Would cost the industry \$368.5 billion over 25 years. LEGAL PROTECTION: Would provide industry immunity from class-action and similar law-suits, although individuals could still sue for actual damages from past tobacco use. FEDERAL REGULATION: Broad authority for FDA regulation of tobacco products. YOUTH SMOKING: Broad restrictions on advertising and marketing to youth. If youth smoking fails to drop 30 percent in five years, 50 percent in seven years, and 60 percent in 10 years, industry would be fined about \$80 million for each percentage point short on the goal. MCCAIN BILL PRICE INCREASE: Would place a per-pack fee on cigarettes, starting at 65 cents in 1999 and rising to \$1.10 in five years. INDUSTRY PAYMENTS: Would cost industry \$516 billion over 25 years, according to McCain. The industry estimates it would pay \$574 billion over 25 years. LEGAL PROTECTION: Would cap liability at \$6.5 billion a year and would settle attorney general lawsuits and current major class-action cases. No ban on mass lawsuits or punitive damages. FEDERAL REGULATION: Broad authority for FDA regulation of tobacco products. YOUTH SMOKING: Broad restrictions on advertising and marketing to youth. Penalties of up to \$3.5 billion a year if companies fail to meet targets to reduce youth smoking by 60 percent in 10 years. Wendell H. Ford (D-Ky.), left, and John McCain (R-Ariz.), right, confer with Commerce Committee majority staff director John Raidt before markup. Before session, Mississippi Attorney General Michael Moore, left, who spearheaded effort for deal with tobacco companies, talks to Sen. Wendell H. Ford (D-Ky.), who objected that not enough was done for tobacco

LANGUAGE: ENGLISH

LOAD-DATE: April 02, 1998

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The Washington Times

April 2, 1998, Thursday, Final Edition

SECTION: Part B; BUSINESS; Pg. B8

LENGTH: 647 words

HEADLINE: Senate panel OKs tobacco measure

BYLINE: Samuel Goldreich; THE WASHINGTON TIMES

The Washington Times, April 2, 1998

BODY:

A Senate committee passed a sweeping tobacco-control bill yesterday, setting up a fight over whether Congress can restrict cigarette advertising without the industry's consent.

The bill would not give tobacco makers the limited protection they seek against health-related lawsuits.

The Senate commerce committee voted 19-1 to boost federal cigarette taxes by \$1.10 per pack, cap annual legal damages at \$6.5 billion and grant broad authority for the Food and Drug Administration (FDA) to regulate nicotine as a drug.

Committee Chairman John McCain, Arizona Republican, succeeded in defeating scores of amendments, many of which would have gutted the bill. But he predicted an intense battle in the full Senate after negotiations with other committees and the White House are finished.

"That's going to involve a lot of big fights, including one we avoided here, which is how to spend the money," Mr. McCain said.

The committee left the Senate to decide the thorniest issues, such as what to do with more than \$516 billion the bill would raise over the next 25 years and whether to slap limits on fees for lawyers who sue the tobacco industry.

The legislation did not include some of the harsher penalties sought by Democrats, including unlimited "lookback" fines on tobacco makers if teen-age smoking goals are not met.

"This vote gives the bill lots of momentum, so we can improve upon it when it reaches the Senate floor," said Elena Kagan, White House deputy domestic policy adviser.

The bill is described as legislation to implement the \$368.5 billion settlement proposed in June by the tobacco industry and 40 state attorneys general. But the commerce committee rejected key parts of that deal. It did not grant tobacco makers immunity from future class-action lawsuits, for instance, and it did not ban punitive damages for past actions.

The tobacco industry vowed to fight the bill in court if it becomes law, contending that its advertising restrictions and lookback penalties are unconstitutional.

If the bill passes, it would "guarantee that the history of litigation and confrontation concerning tobacco products would continue inevitably," tobacco attorney J. Phil Carlton wrote in a letter to Mr. McCain.

Several commerce committee members gave the same warning, saying that there is no way for Congress to impose advertising restrictions and fines for teen-age smoking unless tobacco makers agree to those provisions under separate court decrees.

The Washington Times, April 2, 1998

"I don't think the Supreme Court is going to support all of that under the Constitution," said Sen. John B. Breaux, Louisiana Democrat.

Democrats and Republicans crossed party lines to try to change the basic thrust of the bill, which is seen as the best chance to pass tobacco legislation this year.

Sen. John Ashcroft, Missouri Republican, cast the lone vote against the bill. He opposed giving tobacco companies any breaks, and he sought to tie limits on tobacco lawsuits to a broader agenda of protecting charitable institutions, biotech firms and other industries from product-liability lawsuits.

"If limiting liability is OK for merchants of death, it is better for merchants of life," he said.

But the committee defeated three amendments Mr. Ashcroft proposed that would have killed the \$6.5 billion annual cap on tobacco payments to settle lawsuits. The committee also rejected most of the 47 amendments proposed by Sen. Wendell H. Ford, Kentucky Democrat, who sought to soften the blow to the tobacco industry.

"I'm not willing to support legislation that raises taxes unnecessarily and hurts my farmers," he said. "I'm not willing to endorse legislation that bankrupts the tobacco industry."

But Mr. Ford voted for the bill after winning approval for amendments that would aid tobacco farmers and make sure the FDA has no power to regulate them.

GRAPHIC: Photo, The Senate Commerce, Science and Transportation Committee yesterday used one of the largest hearing rooms on Capitol Hill to finalize legislation to greatly change the way U.S. tobacco companies do business., By Kenneth Lambert/The Washington Times

LANGUAGE: ENGLISH

LOAD-DATE: April 2, 1998

LEVEL 1 - 58 OF 166 STORIES

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AFX News

April 1, 1998, Wednesday

SECTION: Government; Government Changes, Cabinet Lists; Company News; Regulatory Actions

LENGTH: 895 words

HEADLINE: U.S. Senate Commerce Committee passes comprehensive tobacco bill

BODY:
WASHINGTON (AFX) - The Senate Commerce Committee passed a comprehensive tobacco bill, clearing a major hurdle toward passage in the Senate.

AFX News, April 1, 1998

The bill was passed by an overwhelming majority of 18 to 1. Senator Ernest Hollings was not able to vote because he was detained on the Senate floor to debate budget legislation.

The bill raises cigarette prices by 1.10 usd per pack over five years, and costs the industry 506 bln usd over 25 years. The companies' liability is capped at 6.5 bln usd annually.

The industry must meet stiff teenage smoking reduction targets and its products and ingredients will be regulated by the Food and Drug Administration.

Senate Commerce Committee Chairman John McCain said he has met with Senate Majority Leader Trent Lott and Democratic leader Tom Daschle, who said they are eager to move the legislation to the floor in May.

There are still stumbling blocks to the bill making it to the floor. The leadership from either party could block the legislation, analysts said.

However, Elena Kagan, a senior White House policy advisor, said the Clinton administration will be working with the Senate leadership to urge the leadership to move the legislation to the floor for a vote as soon as possible.

LANGUAGE: ENGLISH

LOAD-DATE: April 2, 1998

LEVEL 1 - 59 OF 166 STORIES

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APRIL 1, 1998, WEDNESDAY

SECTION: IN THE NEWS

LENGTH: 26647 words

HEADLINE: AFTERNOON SESSION,
SENATE COMMERCE, SCIENCE AND TRANSPORTATION COMMITTEE MARKUP
CHAired BY: SEN. JOHN MCCAIN (R-AZ)
216 HART SENATE OFFICE BLDG.
WASHINGTON, DC

BODY:
SEN. MCCAIN: I want to thank everybody for returning. I want to continue with the amending process, and I'd like to repeat again after an assessment of where we are and where we need to go, it's the consensus on the committee that we could finish by early evening tonight. That obviously will require the cooperation and active acquiescence to certain compromises on the part of all members.
I'd like to continue by recognizing Senator Ashcroft for his second, I believe, of three amendments at this time. Senator Ashcroft.
SEN. JOHN ASHCROFT (R-MO): Thank you, Mr. Chairman. I would refer the committee to the Ashcroft Amendment Number 2: "to provide legal standards and procedures for suppliers of raw materials and component parts for medical devices." This

Federal News Service, APRIL 1, 1998

amendment is consistent with the line of reasoning in the amendment which I posed this morning. The settlement that's been proposed, and upon which the committee is being asked to act, and upon which Congress is being asked to act, limits the liability of tobacco companies. It restrains the amount of money which can be obtained by citizens of this country, or others, in lawsuits against the company -- companies -- and limits the amount of recovery. The amount of recovery is limited, whether it be from class action suits or for compensatory damages or even punitive damages. There is a rather thorough limitation, and it gives these companies, who have confessed now and provided documentation of the fact that they -- their activities have been injurious to the health of Americans, it gives them the opportunity to operate, so as to continue to sell these products, which are confessed to be against the health and well-being of the culture. It must -- it may be that we want them to continue for purposes of the revenue, but whatever it is, the purpose of this settlement is to allow them to continue, and to provide in their continuity the opportunity to continue to provide this fund against which people can go. In contrast, there is a group of businesses that provide, instead of injurious products, provide therapeutic process and products. I'm holding in my hand a shunt that drains extra fluid from the brain of individuals who need to have the relief in terms of the fluids in the brain.

SEN. MCCAIN: A brain drain, then.

SEN. ASHCROFT: This is made of biomaterials such as silicone, polyester, dacron, and rubber. They're used in the life-saving medical implant devices, and our current product liability system threatens these. My office was called recently by Karen Ranson's (ph) mother, who explained that their situation in finding a supplier for the biomaterial necessary for Karen's brain shunt is getting desperate.

Now, I believe that companies that will provide this kind of material, that saves lives, should have protection from unwarranted and abusive lawsuits at least as readily as companies that provide and manufacture products which endanger lives, as the tobacco companies have confessed that their product does. And I believe that these kinds of manufacturers, who provide the raw materials, should be able to obtain relief from unwarranted lawsuits. And they should be able to provide that kind of material, so that these devices continue to be available.

There's been a lot of talk around the tobacco settlement about the potential of tobacco companies going bankrupt and leaving. Well, there are suppliers of medical devices, particularly the raw materials for medical devices, are threatened by the legal environment. Now, I don't propose anything that would deprive a person of compensatory damages. I don't propose anything that would keep a plaintiff from recovering from manufacturers or sellers of medical implants. It's just simply that the suppliers of the raw materials, the generic raw materials, should be able to be dismissed, if the generic raw materials met the contract specifications. Here we have a clear opportunity to vote in favor of companies that provide for life and health, and are threatened by a legal climate that makes it impossible for them to do so. And I think, if we are willing to provide legal protection for the companies that are manufacturing tobacco, which attacks the health and undermines the life-quality of individuals, the least we can do is to provide protection for those who would provide the raw materials who would make it possible for people to stay alive, with this kind of brain shunt that drains excess fluid from the brain down into the abdomen.

It's with that in mind that I ask the committee to pass the Ashcroft Amendment Number 2.

SEN. MCCAIN: Thank you very much, Senator Ashcroft.

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SEN. ASHCROFT: And I ask for the yea's and nay's, for a recorded vote.

SEN. MCCAIN: Thank you very much, Senator Ashcroft. And let me just say that I'm very pleased at your support of the biomaterials issue. Senator Lieberman and I, and a number of others, introduced legislation to try and cure this terrible problem several years ago. And very frankly, it was the plight of the Ranson (ph) family that motivated us to do so, as well as the other compelling evidence. I appreciate your concern on the issue, and I look forward to working with you.

I would also like to mention to you that the Majority Leader has stated that this is an important issue that will be addressed in the Senate this year as well. He mentioned that as short a time ago as yesterday or the day before. So I can assure Senator Ashcroft that the majority of his colleagues are committed to resolving this issue, as well as the issue of overall product liability reform.

This committee reported out a Product Liability Reform bill, which the -- again, the Majority Leader with the help of Senator Gorton said that we will try to take up one way or another. As is well known, Senator Rockefeller has been working for nearly two years now, trying to craft a compromise that's acceptable. So far, we have not succeeded in that, but I understand we've come very close on several occasions.

Senator FON. oft, I appreciate your commitment. I would point out that it really is not relevant to this piece of legislation. I understand your logical connection, but I would hope that we could table this amendment. Is there any further discussion on it? If not, Senator Ashcroft has asked for the yea's and nay's. The clerk will call roll.

CLERK: Mr. Stevens?

SEN. MCCAIN: No by proxy. CLERK: No by proxy. Mr. Burns?

SEN. MCCAIN: No by proxy.

CLERK: Mr. Gorton?

SEN. MCCAIN: No by proxy.

CLERK: Mr. Lott?

SEN. MCCAIN: No by proxy.

CLERK: Mr. Hutchison?

SEN. HUTCHISON: Pass.

CLERK: Oh, sorry. Mrs. Hutchison?

SEN. HUTCHISON: I pass.

CLERK: Ms. Snowe?

SEN. OLYMPIA SNOWE (R-Maine): No.

CLERK: Mr. Ashcroft?

SEN. ASHCROFT: Aye.

CLERK: Mr. Frist? Mr. Abraham?

SEN. MAURICE ABRAHAM (R-MICH): Aye.

CLERK: Abraham is aye. Mr. Brownback?

SEN. SAM BROWNBAC (R-Kans.): Aye.

CLERK: Aye. Mr. Hollings?

SEN. ERNEST HOLLINGS (D-S. Carolina): No.

CLERK: Mr. Inouye?

SEN. : No via proxy.

CLERK: No by proxy.

SEN. MCCAIN: Dr. Frist is no by proxy.

CLERK: Frist is no by proxy. Mr. Ford?

SEN. WENDELL FORD (D-Ky.): No.

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CLERK: Mr. Rockefeller?

SEN. JAY ROCKEFELLER (D-W. Va.): No.

CLERK: No. Mr. Kerry?

SEN. JOHN KERRY (D-Mass.): No.

CLERK: Mr. Breaux?

SEN. JOHN BREAUX (D-La.): No.

CLERK: Mr. Bryan?

SEN. RICHARD BRYAN (D-Nev.): No.

CLERK: Mr. Dorgan?

SEN. BYRON DORGAN (D-N. Dak.): Abstain.

CLERK: Mr. Weiden?

SEN. WEIDEN: Abstain.

CLERK: Mr. Chairman?

SEN. MCCAIN: No.

CLERK: Yeas 3, Nays 13.

SEN. MCCAIN: The amendment is not agreed to. Before we go to your third amendment, Senator Ashcroft, I'd like to welcome back -- actually, I wouldn't like to do anything. Senator Ashcroft, you are recognized for your third amendment.

SEN. ASHCROFT: My third amendment is an amendment that relates to products generally, and it is in line with the other amendments. I feel as if we are providing lawsuit relief and liability relief to tobacco companies whose products, when used as directed, result in injury to the public. We should at least provide a framework in which individuals who manufacture products, which -- for the benefit of the public, is helpful to those companies. Nothing in this proposal would limit the ability of anyone to have compensatory damages, and certainly wouldn't have the same kind of impact on those companies which the limitation of liability has for tobacco companies. I would be very happy to explain this further, but I think I am sensing a trend --

SEN. MCCAIN: (Laughs. Laughter.) SEN. ASHCROFT: -- in the way that the votes are going. The liability limitations in the measure for the tobacco companies, limit the liability of these companies as it relates to both compensatory and punitive damages. That would not be the case, but the primary impact of the measure that I would offer for product liability is to say that in the first -- after the first 15 years, there would be a statute of repose. With that, I move the adoption of the amendment by committee, and -- by the committee. And I ask for a roll call vote.

SEN. MCCAIN: I'd like to recognize Senator Rockefeller for comments, and then we'll have a roll call vote.

SEN. ROCKEFELLER: Mr. Chairman, I was not able to hear that entire presentation. I apologize. But, I just want to state to the good senator that Senator Gorton and I continue to be working very closely on a bill which is not all that some would want it to be, but it would be a start. And I think that things appear to be a little bit better in the last several days, and I really think the place to do that is on the floor, and not here. And I really would oppose the amendment for that purpose.

SEN. ASHCROFT: May I express my appreciation to the Senator from West Virginia for his work to correct this situation, which is a situation that demands correction. And I appreciate his hard work, and as chairman of the Consumer Protection subcommittee of this committee, I would be very pleased to be involved in advancing those interests, whenever and wherever possible. If not here, then in other settings.

SEN. MCCAIN: I thank both Senator Ashcroft and Senator Rockefeller. And Senator Rockefeller, again, you have the appreciation of every member of this committee for all the very hard work you've done, now for -- not more than two years, I

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think it's more like four years, if I --

SEN. ROCKEFELLER: It's longer than I'd like to think about.

SEN. MCCAIN: Excuse me, 11 years. (Laughter.)

SEN. ROCKEFELLER: But we did have lots of fun.

SEN. MCCAIN: So, all the member but Senator Hollings are very grateful to you, as you know. (Laughter.) So, with that, we'll ask the clerk to call the roll.

CLERK: Mr. Stevens?

SEN. MCCAIN: No by proxy.

CLERK: Mr. Burns?

SEN. MCCAIN: No by proxy. CLERK: Mr. Gorton?

SEN. MCCAIN: No by proxy.

CLERK: Mr. Lott? Mrs. Hutchison?

SEN. HUTCHISON: No.

CLERK: Ms. Snowe?

SEN. SNOWE: No.

CLERK: Mr. Ashcroft?

SEN. ASHCROFT: Aye.

CLERK: Mr. Frist?

SEN. MCCAIN: No by proxy.

CLERK: Mr. Abraham?

SEN. ABRAHAM: No.

CLERK: Mr. Brownback?

SEN. BROWNBACK: Aye.

CLERK: Mr. Hollings?

SEN. HOLLINGS: No.

CLERK: Mr. Inouye?

SEN. MCCAIN (?): No by proxy.

CLERK: Mr. Ford?

SEN. FORD: No.

CLERK: Mr. Rockefeller?

SEN. ROCKEFELLER: No.

CLERK: Mr. Kerry?

SEN. KERRY: No.

CLERK: Mr. Breaux?

SEN. BREAUX: No.

CLERK: Mr. Bryan?

SEN. BRYAN: No.

CLERK: Mr. Dorgan?

SEN. MCCAIN (?): No instructions.

CLERK: Mr. Wyden?

SEN. WYDEN: No.

CLERK: Mr. Chairman?

SEN. MCCAIN: No.

CLERK: Yeas 2, Nays 16.

SEN. MCCAIN: The amendment is not agreed to. Now I'd like to welcome back Senator Kerry, who had to attend a very important funeral up in Massachusetts this morning. Thank you, Senator Kerry, for all you've done on this issue. We're very grateful. And I understand you do have some amendments. We're now on page -- Title IV on this, and at Hollings 1, "Apportionment of Annual Payment."

SEN. ASHCROFT: Mr. Chairman?

SEN. MCCAIN: Senator Ashcroft.

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SEN. ASHCROFT: Mr. Chairman, I had offered three amendments of the four on the list.

SEN. MCCAIN: I'm sorry.

SEN. ASHCROFT: Was it your intention that I should offer the other amendment at some other time?

SEN. MCCAIN: I only -- I only had three here. I will be glad to, and we'll be glad to hear your fourth amendment.

SEN. ASHCROFT: Well, I figured it might be in the interest of the committee to go ahead and dispose of this last amendment.

SEN. MCCAIN: Thank you very much, Senator. Please proceed.

SEN. ASHCROFT: With the indulgence of the committee, it is my view that if we're unwilling to provide relief to other industries, that we should not provide special relief to the tobacco industry. So, the last amendment was to strike Section 7, which provided the -- which would have provided relief to the tobacco industry in the litigation, by way of limiting liability. And I would ask the committee to enact that amendment, by striking Section -- or Title 7.

SEN. FORD: Mr. Chairman, we're not -- there are still class action suits, still individual suits. The only thing is that it's limited, as of now, to \$6.5 billion a year. And if you don't get the money this year, you get it next year if you win your lawsuit. So we're not restricting anyone from suing or anything. And I think this is an amendment that deserves the treatment of the other three.

SEN. MCCAIN: Senator Ford, I agree. As we all know, we've spent many weeks and hundreds of hours in achieving this bipartisan consensus. And if we pull this out, obviously that would fall apart. I understand and sympathize with the views of Senator Ashcroft and others also. I regret that Senator Dorgan is not here because he was going to propose the same amendment.

Okay, Senator Dorgan has asked that we withhold, because he wants to speak in favor of the amendment. So Senator Ashcroft, if it's agreeable to you, we will, with unanimous consent, set aside your amendment until Senator Dorgan can come and speak in favor of it. Then we'll have the roll call vote if you don't object.

SEN. ASHCROFT: Go ahead with the committee. It may or may not be that I'll be here when he comes, but I'm confident of his eloquence when he arrives.

SEN. MCCAIN: Thank you very much, Senator Ashcroft. We have set aside the pending Ashcroft amendment until Senator Dorgan arrives to speak in favor of the amendment.

Now we're at Hollings 1. Is that -- we passed that.

SEN. HOLLINGS: We passed that one. And Hollings 2, I'm working with Senator Wyden on that one.

SEN. MCCAIN: Okay.

SEN. HOLLINGS: So if you don't mind if we pass that over and we could come back to it.

SEN. MCCAIN: Yes, sir. We will pass over Hollings 2 and perhaps have to revisit it or it'll be worked out. That brings us to Ford 1, 2, 19, 20, 21, 45 and 46.

SEN. FORD: All right, Mr. Chairman, I want to bring up amendment number two.

SEN. MCCAIN: Amendment number two.

SEN. FORD: Yes, sir, under that listing that you gave.

SEN. MCCAIN: Will the staff distribute amendment number two, which has to do with reducing annual payment amounts to the Clinton budget. Senator Ford is recognized.

SEN. FORD: I thank the chairman. We're getting to the point, Mr. Chairman, I believe, that a lot of the members of this committee have reached, and that is

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the point that we are killing this piece of legislation with the weight of money and new programs and the very small amount of money that goes to anti-smoking or reduction of youth smoking.

This amendment merely inserts the exact annual tobacco legislation revenues from the Clinton budget. According to the Clinton budget, and I quote, "These amounts are consistent with the president's call for an increase per pack of cigarette prices up to a dollar and a half in constant dollars over 10 years, as necessary, to meet the targets set to reduce youth smoking." End of quote.

Now, Mr. Chairman, if these revenue amounts are good enough in February, why aren't they good enough the first day of April? And why do we need to pass legislation providing almost twice, almost twice as much in tax increases as in the president's budget and more than five times, and I underscore, five times the amount necessary to pay for the youth smoking and tobacco spending proposals in the Clinton budget?

So, Mr. Chairman, this spends \$9.8 billion the first year, \$11.8 (billion) in the second year, \$13.3 (billion) in the third, 14 and a half billion (dollars) in the fourth, and five years and subsequent years, \$16.1 billion. And I think this meets everything in the agreement last June, plus everything that the president has said he needs to add on, and up to a dollar and a half a pack of cigarettes. So if we're going to come out of this committee with a bill that has some fiscal responsibility to it, then I believe this amendment is one that we have to pass.

SEN. MCCAIN: Thank you very much, Senator Ford. As you know, we've taken the administration's budget request for the first five years, which requires us to use six dollars. In other words, they already include an inflation factor. In 1998 dollars, the settlement is \$506 billion over 25 years. And again, these figures and totals are the estimates of the Department of the Treasury. Mr. Gottbaum (sp) is here, who is a representative of the Treasury Department -- OMB, OMB. And Mr. Gruber is here as a member of -- Mr. Gruber, maybe you want to go down to that end. I don't know if we'll need you or not. Perhaps you can substantiate our numbers for us.

Mr. Gottbaum, maybe a brief comment from you and one from you, Mr. Gruber. Please proceed.

MR. GOTTBaum: Senator, we needed to separate out two things. One is that whatever the effect is of the total payments, whatever the total payments are that the companies ultimately pay per year, that's not the total amount that the U.S. government is actually going to receive, because assuming, as we hope, that these payments are passed through to prices and raise prices, that means that people are going to smoke less and that means that the excise taxes that the federal government would collect will also be a lesser amount. And so what we have done in each case --

SEN. FORD: It's called a haircut, and I understand that very well. You're not telling me something I don't know.

MR. GOTTBaum: Okay. And so what we have done is provided to the committee two sets of numbers -- that set, year by year, of gross amount, which, if collected from the tobacco companies, would achieve price increases of 65 cents, 70, 80, \$1.00, \$1.10, as the committee requested; and then, on a separate estimate, sir, of what the effect of that would be on the federal budget, which would obviously be a smaller amount.

And so, for example, in the chairman's mark there is a gross number of \$23.6 billion in the year 2003. Okay, in 1999 dollars, in real dollars, that's about \$21 billion. That \$21 billion, divided by the number of packs we think would occur with those price increases, works out to \$1.10. And that's where the \$1.10 comes from. It is an amount, divided by the number of smokers we think there would be, taking into account the price increases.

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SEN. FORD: Are you going to change the budget, then, that's been submitted to us? Because we have the budget here that says that the total tobacco legislation receipts are \$9.8 (billion), \$11.8 (billion), \$13.3 (billion), \$14.5 (billion), \$16.1 (billion), for a total of \$65.5 (billion).

MR. GOTTBaum: It is absolutely the case, Senator, that if and when this bill becomes law, we will report that the receipts from tobacco that were in the president's budget are slightly different, but only slightly different from --

SEN. FORD: But you can't be perfect in your estimate of any income, or can you?

MR. GOTTBaum: We have -- Senator, I will argue that we have some of the best people in the world --

SEN. FORD: Oh, I understand that, but you're not perfect yet.

MR. GOTTBaum: Yes.

SEN. FORD: And so my amendment is just as close as yours may be.

SEN. MCCAIN: Could I ask Mr. Gruber to comment from the Treasury Department?

MR. GRUBER: I think, Senator Ford, the big difference here is the difference between what is collected by the tobacco companies and what is the net receipts to the federal government. The scoring procedure by both the Treasury Department and the Joint Tax Committee is that when revenues are collected, the amount of revenues collected is offset by a certain amount when calculating the receipts to the federal government.

This accounts for the fact that when we collect revenues from taxpayers or from other parties, they then have less income on which they can pay other taxes. And that kind of tax offset is the difference between what we collect from them and what we receive in the Treasury. The difference between the \$23.6 (billion) that's in the chairman's mark and the \$16.5 (billion) that's in our budget is exactly that tax offset. Those two numbers are not inconsistent. We're collecting -- this is standard scoring procedure by Treasury and by JTC.

SEN. FORD: No, I think the percentage is a little bit higher in this one than it is in others.

MR. GOTTBaum: Senator, the only reason, to be quite clear about that, we are using the exact same method in estimating this bill that we use in estimating any similar legislation. And, if I may, we are using the same method we believe that the Joint Tax Committee would use, the Congressional Budget Office would use.

SEN. FORD: Well, let me ask you --

MR. GOTTBaum: The reason it is slightly larger than the percentage you usually see is because in this case, not only do we have to look at what we call our standard excise tax offset, which is 25 percent, but we also have to look at the effect of reduced federal excise taxes on tobacco.

And those two together are larger than the 25 percent that has been bandied about. But the method, sir, is exactly the same.

SEN. FORD: Well, let me ask you this, then. What is your 25- year estimate of the so-called McCain bill or the committee bill in gross dollars or net?

MR. GOTTBaum: The base payments, putting aside the up-front and putting aside what --

SEN. FORD: Let's don't put aside -- let's put the cost of this legislation in the figures. And when talk about \$564 (billion), that was changed this morning sometime before daylight. It's now -- and you add \$10 (billion) to that; it's \$574 (billion). So let's put all the money on the table and so we can understand what this is really going to cost.

MR. GOTTBaum: Senator, we understand that in the work that was done to put this bill together -- and it was hurried, as you all know -- that some of the inflation factors that were put in were put in in a way that double-counts.

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And assume that those are correct --

SEN. FORD: Wait a minute. Just a minute. Are you telling me I'm looking at a bill that the figures double-count?

MR. GOTTBAUM: Senator, I'm telling you that the original bill, as drafted --

SEN. FORD: Compared to the one we're working on now.

MR. GOTTBAUM: My understanding, Senator, is that there is a technical corrections bill which I understand is before the committee which would correct this by changing the double count.

SEN. FORD: You mean, we had a double count. So we all worked our hearts out to try to figure out where we are, and then we have a double-count.

SEN. MCCAIN: The fact is now that we have an accurate count and an accurate number that the Department of Treasury and the OMB are in agreement with. And that's the reality. Mistakes are made, if I may coin a phrase that's used around this town. SEN. FORD: I make them all the time. That's nothing new.

SEN. MCCAIN: And so these are the legitimate figures, according to both OMB and Secretary --

MR. GOTTBAUM: And in real terms, Senator, we believe the base payment over 25 years is \$506 billion. There is an up-front payment of \$10 (billion).

SEN. FORD: Of \$16 (billion).

MR. GOTTBAUM: Of \$16 (billion). And then there is --

SEN. FORD: What about look-back?

MR. GOTTBAUM: Our view of the look-back is that in practice it would be something on the order of at most a couple of billion dollars when it comes into effect, when it actually binds, which we think is unlikely in the first five to 10 years. And so our view is that the total incremental cost that might be paid to the look-back would move these figures by five or 10, but not much more than that.

SEN. FORD: About five or 10 times?

MR. GOTTBAUM: No, sir -- billion dollars -- to a number that is already \$516 (billion).

Do you want to speak to the --

SEN. FORD: Now, is the tax deductibility being figured in this?

MR. GOTTBAUM: Yes.

SEN. FORD: And they do get to deduct -- it is deductible?

MR. GOTTBAUM: The look-back --

SEN. FORD: The look-back is not deductible, is it?

MR. GOTTBAUM: -- (inaudible) -- is not the base payment, as we understand it.

SEN. FORD: The look-back is not deductible, but the other payments are?

MR. GOTTBAUM: That's our understanding, Senator.

MR. GRUBER: Yes. The base payments, we believe, in the chairman's mark are deductible. The look-back payments are not deductible. More precisely, our calculations suggest --

SEN. FORD: How much increase does that cost the manufacturer then if they're unable to take tax deductibility on the look-back? MR. GRUBER: On the look-back, roughly what that says is -- well, what we're saying is the payments that the industry would be making, by our estimates, the non-deductible payments would be on the order of roughly one and a half billion dollars a year in the out years, by our estimates.

SEN. FORD: In addition?

MR. GRUBER: In addition to the -- there's the \$506 (billion), the \$10 (billion), and then the look-back payments. They obviously vary year by year. We estimate that there will be no look-back payments until 2006. And then we estimate look-back payments that start at about \$300 million and rise to about a billion and a half.

MR. GOTTBAUM: And, John, what's the total, just to give the senator some idea?

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SEN. FORD: You add this on to the \$516 (billion), then, won't you?

MR. GRUBER: That's right.

MR. GOTTBAUM: On our estimate, Senator, the \$516 (billion) might, on John's numbers, in the first 10 years rise to something like \$520 billion.

SEN. FORD: Five-twenty. So we're moved up. And then the other -- then how much more would we add on to it after that?

MR. GOTTBAUM: That, sir, depends on the extent of compliance with the youth targets. The point that we just wanted to make, Senator, is that the \$506 billion number that was shown to you all by the chairman on Monday, we believe, is the right number expressed in real terms over 25 years. The look-back penalty, although it is, in addition to it, if it takes place, is unlikely to move that number by very much, sir.

SEN. FORD: Well, up to a billion and a half a year. That's not insignificant, in my opinion.

MR. GRUBER: We haven't done estimates all the way out for 25 years, but a rough estimate over 25 years would be about \$25 billion.

SEN. FORD: So we add \$25 billion to the \$516 (billion)?

MR. GRUBER: Yes.

MR. GOTTBAUM (?): In real terms?

MR. GRUBER: No, that's in nominal terms. So we wouldn't add that. We'd have to (deflate?) that.

MR. GOTTBAUM: You're talking about \$2 billion starting in year --

SEN. FORD: But, see, when you guys make up your own mind, maybe you can help this senator. (Laughter.) Now, the reason I'm so concerned about this is that if we go so far, there won't be any company out there. And if we don't have a company out there, then what we're trying to do here is moot. What I'm trying to do for my farmers is just a hollow shell.

And so if we don't have something that we can say will be there for 25 years and we've done something to load them up so that it falls -- now, have you looked at Wall Street's estimate this morning?

MR. GOTTBAUM: Senator, we've spent many hours in discussion with Wall Street analysts. And as my colleagues, Larry Summers and John, I suspect, told you all last week, there are a range of views as to what the effect of this legislation would be. But that range usually talks about the effect on a company's bond rating, not the company's survivability. And we think that's a distinction that matters a lot.

SEN. FORD: Well, it came out -- the -- (inaudible) -- cost of McCain's mark is considerably higher than the \$506 (billion). You've already admitted to that. It's already higher. You've already added -- you added \$10 (billion) you forgot to put on. You've got about another \$25 (billion) that you're going to have to put on. And so that is higher. Quoted by the Senate Commerce press release, if we include look-back penalties, adds about \$78 billion. Effect of a non-tax-deductibility penalties, \$42 billion and the up-front payment of \$10 (billion), we come up with the grand total of \$637 (billion).

MR. GOTTBAUM: And, Senator, I think I'm only reiterating what my colleague said, but it is our view, after a great deal of analysis -- and nobody here claims perfect knowledge, sir -- but it is our view that numbers like \$78 billion on look-back penalty are wildly higher than what we (expected?).

SEN. FORD: So then you're to be wildly lower.

SEN. MCCAIN: Senator Ford, I hope that we can wrap this up so we can move forward.

SEN. FORD: I understand, Mr. Chairman. But this is getting at the guts of it and how much money is going to be spent, how much money we're going to load

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down the manufacturers, how many programs we're going to fund. All this has to be here. And then we get down to the money. Are you willing to stay at the present figures, or are you going to let it go out where it's so big that we won't be able to handle it?

MR. GOTTBAUM: Senator, in the president's budget we assumed no collection of look-back penalties at all, sir. SEN. FORD: That's first five years.

MR. GOTTBAUM: No. We -- well, we only budget for five years, Senator.

SEN. FORD: I understand. But that's just first five years. We're talking about 25 here.

MR. GOTTBAUM: Right. But it was our view that we hoped that when comprehensive legislation was reported that it would be sufficiently effective that there would be no such penalties collected, sir. In any event, we didn't propose any use for them because we think of them as insurance, not as a base source of revenue for anybody.

SEN. FORD: Oh, so the look-back penalties are insurance and you don't that count as income?

MR. GOTTBAUM: We view the look-back penalty as insurance, sir, yes.

SEN. FORD: And so no income.

MR. GOTTBAUM: It's not in the president's budget.

SEN. FORD: Well, I understand that. I'm not in the president's budget, either. (Laughter.)

And -- but, Mr. Chairman, I know where we're going. But this is a point I want to be made, that the 16.1 billion each of the next 20 years after the fourth year, the 21 years, that seems to me to be about as much as you ought to be able to spend.

MR. GOTTBAUM: Senator, I'm grateful for the committee's courtesy on this point. Our view is that having likelihood at this, senator, for sometime and with some effort, and again, not claiming perfect knowledge, is that the kinds of youth targets that were put in the attorney generals' settlement ought to be achievable. We drew some comfort from the fact that companies themselves signed onto that agreement.

And so in the president's budget we assumed that you gentlemen passed legislation, that it was comprehensive, and that it resulted in compliance. And that is the reason, senator, why we estimated zero dollars paid as a result of youth look-back. And that is the result that we fervently hope will happen.

SEN. FORD: Well, Mr. Chairman, I may get beat and get beat pretty bad, but I'll find out how many colleagues on here want to go to the almost \$600 billion compared to the 506 that we have in -- that were estimated in your bill. So I'll ask for a roll call vote.

SEN. MCCAIN: The clerk will call the roll.

CLERK: Mr. Stevens.

SEN. STEVENS: No.

CLERK: No.

Mr. Burns.

SEN. BURNS: Aye.

CLERK: Aye.

Mr. Gorton.

SEN. GORTON: Aye.

CLERK: Aye.

Mr. Lott.

Mrs. Hutchison.

SEN. HUTCHISON: Pass.

CLERK: Pass.

Miss Snowe.

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SEN. SNOWE: No.
CLERK: No.
Mr. Ashcroft.
SEN. ASHCROFT: Aye.
CLERK: Aye.
Mr. Frist.
SEN. MCCAIN: No by proxy.
CLERK: No by proxy.
Mr. Abraham.
SEN. ABRAHAM: No.
CLERK: No.
Mr. Brownback. SEN. BROWNBAC: No.
CLERK: Mr. Hollings.
SEN. HOLLINGS: No.
CLERK: Mr. Inouye.

Mr. Ford.
SEN. FORD: Aye.
CLERK: Mr. Rockefeller.
SEN. ROCKEFELLER: No.
CLERK: Mr. Kerry.
SEN. KERRY: No.
CLERK: Mr. Breaux.
SEN. BREAU: No.
CLERK: Mr. Bryan.
SEN. BRYAN: No.
CLERK: Mr. Dorgan.
Mr. Wyden.
SEN. WYDEN: No.
CLERK: Mr. Chairman.
SEN. MCCAIN: No.
CLERK: Yeas 4, nays 13.
SEN. MCCAIN: The amendment is not agreed to.
We have additional Ford amendments --
SEN. FORD: 45, Mr. Chairman.
SEN. MCCAIN: 45.

SEN. FORD: Yes, sir.
(Pause; cross talk off mike.)
SEN. FORD: Now, Mr. Chairman, the purpose is to limit real annual payments to 506 billion over 25 years, as the legislation has been publicly described and as the two -- the gentlemen from the Treasury have said what it would be. So on page 158, we strike lines through -- 10 through 15 to insert the following: a billion 5, 12 billion, 14 five, 18 billion; and each year after that to 21 billion dollars a year. This bill has publicly been represented as a 506 billion dollar piece of legislation. This estimate is based on an earlier administration estimate of how to raise taxes by a dollar and 10 cents per pack. The real cost of the annual payments in the bill is actually much higher than that.
And if the intent of the bill was truly to limit the cost to 506 billion, this amendment should be non-controversial, Mr. Chairman. And I hope that we will pass this amendment and limit the 506 billion in real dollars.
SEN. MCCAIN: Mr. Gottbaum.
MR. GOTTBAUM: Mr. Chairman, Senator Ford. Whether this gets to 506 depends on

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when you start inflating.

SEN. FORD: Start what?

MR. GOTTBaum: When you starting applying inflation to these real numbers. In the original chairman's mark as -- in the original draft of the chairman's mark, inflation started from year one. And if you did that, and you used numbers slightly higher than this, you would get to 506.

In the draft that -- in the technical amendment package that is before you, inflation is actually not started until year six. And so if you took these lower numbers for five years and also did not start inflation until year six, the result would be that you would -- your total assessment would actually be less than the 506 billion and your amount in year five would be less than \$1.10 per pack.

And so, our view, senator, is that the easiest way to get to the double count is to do what is already in your technical corrections package, which is to start inflation in year six and use the stream of numbers that is in the chairman's mark.

SEN. MCCAIN: Is there further debate on the amendment?

SEN. DANIEL INOUE (D-HI): May I ask a question?

SEN. KERRY: Mr. Chairman?

SEN. MCCAIN: (Inaudible.)

SEN. INOUE: May I ask a question?

I'm not an economist, so maybe you can give it to me. Where is the point of diminishing returns? At that point, at what number, would the companies quit or the people quit buying and therefore nothing is raised?

MR. GOTTBaum: Senator Inouye --

SEN. INOUE: -- it starts going down?

MR. GOTTBaum: No -- since I am also, although I was assistant secretary for economic policy, not an economist, if the committee would permit, I would defer to my colleague John Gruber, who is and who has reviewed the literature actually quite extensively.

MR. GRUBER: Senator, it's a very difficult question. We haven't gotten there. But I think what we've done in looking at this is noticed that it's certainly not anywhere what our budget contemplates and certainly not true in other countries which have much higher prices, that they appear to have diminishing -- that they appear to have hit that point of diminishing revenues. So we have not done a precise estimate of where that point is.

What we've done is, by our estimates we've certainly not come close to hitting it, is what's in our budget and what's in the chairman's mark, and that other countries do not appear to have it, with the much higher prices as -- if you look back at Deputy Secretary Summers's testimony from last week, other countries do not appear to have hit it with much higher prices than ours.

SEN. INOUE: What about the suggestion that if you reach this point, this number, that we're talking about, you're black marketing?

MR. GRUBER: We've also reviewed that. And on the evidence on that, once again, we believe that's not a problem at the price differential we're talking about. There's no evidence to suggest that that price differential is going to be large enough to cause the black market.

And we think an important feature of both the chairman's mark and of what the administration discussed is a new system of smuggling control that's beyond what other nations have adopted that will deal in a very serious way with this type of problem.

And we don't anticipate, once again, that the numbers in the chairman's mark, that smuggling and black market --

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SEN. INOUE: The numbers in the chairman's mark will not reach the point of diminishing returns?

MR. GRUBER: That is the opinion of the administration, that it will not.

SEN. MCCAIN: Is there further debate? If not, the clerk will call --

SEN. FORD: Mr. Chairman, let me -- I'm trying to figure out this. Could you look -- and we might postpone a vote. Could you look at my amendment 46 and to see what's wrong with that, since you're starting inflation at -- does that -- "required under Section 4 shall not exceed 506" -- that you're saying that you won't start inflation until the sixth year and therefore the numbers will be under that. Couldn't that be accepted then? That is there anything with that amendment?

MR. GRUBER: Senator, I'm not personally acquainted -- sufficiently acquainted with the committee's procedures to know whether the succession is in order or not. But if you would forebear and let us spend 15 minutes with your staff and with the chairman and ranking staff on a set of numbers, I think we could resolve this.

SEN. FORD: Look at my amendment 46, then, if you would.

Mr. Chairman, I ask unanimous consent that my amendment be set aside until we can have a 15-minute conversation with the office of Treasury.

SEN. MCCAIN: Without objection, Senator Ford's amendments 45 and 46 will be set aside.

I notice the presence of Senator Dorgan. Senator Dorgan, Senator Ashcroft had proposed the amendment that I understand that you had contemplated. And so we asked for withholding of the vote until you came here so that you could speak in support of the amendment if you choose so -- to do so at this time.

Senator Dorgan.

SEN. DORGAN: Yes, the -- I had understood Senator Ashcroft was going to offer an amendment to strike Title VII. My understanding is the amendment as offered is different than that?

I apologize, I was on the floor --

SEN. MCCAIN: (Inaudible.)

SEN. ASHCROFT: That's the way I characterized the amendment and that's what I believe the amendment would be, to strike -- to strike Title VII.

SEN. DORGAN: But Title VII deals with the arbitration issue and a range of other things. Your amendment simply deals with striking the annual liability caps. That's part of Title VII.

SEN. MCCAIN: Do you want the entire section stricken or just the portion of Section VII that has to do with the caps?

SEN. ASHCROFT: I think I've submitted an amendment in writing and I would stay with that. I believe it strikes all of Title VII. But if that --

SEN. MCCAIN: Then --

SEN. ASHCROFT: I don't mind having a separate vote on it.

SEN. MCCAIN: Then, Senator Dorgan, if your amendment is different, we'll proceed with a roll call vote on Senator Ashcroft's amendment and then recognize you for purposes of offering your amendment.

Is that agreeable to you, Senator Dorgan?

SEN. DORGAN: Yes. Although the piece I have in front of me, which is the piece in writing, says "strike the provisions providing annual liability caps." Title VII is broader than that, so I'm not quite sure what is intended with this amendment.

SEN. ASHCROFT: My intent is to simply strike the liability caps.

I think the last amendment we sent, and we sent in several, the last one said to strike Title VII.

SEN. MCCAIN: Then we'll vote on -- is that the amendment -- (inaudible)?

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Okay, then the clerk will call the role on the Ashcroft amendment, and then we'll recognize you, Senator Dorgan, for your amendment.

The clerk will call the role.

CLERK: Mr. Stevens.

SEN. STEVENS: No.

CLERK: No.

Mr. Burns.

SEN. BURNS: No.

CLERK: No.

Mr. Gorton.

SEN. GORTON: No.

CLERK: Mr. Lott.

Mrs. Hutchison.

SEN. HUTCHISON: No.

CLERK: Miss Snowe.

SEN. SNOWE: No.

CLERK: Mr. Ashcroft.

SEN. ASHCROFT: Aye.

CLERK: Mr. Frist.

SEN. MCCAIN: No by proxy.

CLERK: No by proxy.

Mr. Abraham.

SEN. MCCAIN: No by proxy.

CLERK: No by proxy.

Mr. Brownback.

SEN. BROWNBAC: Aye.

CLERK: Aye.

Mr. Hollings.

SEN. HOLLINGS: No. CLERK: Mr. Inouye.

SEN. INOUE: No.

CLERK: Mr. Ford.

Mr. Rockefeller.

SEN. ROCKEFELLER: No.

CLERK: Mr. Kerry.

SEN. KERRY: No.

CLERK: Mr. Breaux.

SEN. HOLLINGS: No by proxy.

CLERK: Mr. Bryan.

SEN. BRYAN: No.

CLERK: Mr. Dorgan.

SEN. MCCAIN: Byron?

(Unintelligible cross talk.)

CLERK: Mr. Wyden.

SEN. WYDEN: No.

CLERK: Mr. Chairman.

SEN. MCCAIN: No.

CLERK: Yeas 2, nays 16.

SEN. MCCAIN: The amendment is not agreed to.

Now I recognize Senator Dorgan for his amendment, which I understand is simply to strike the caps, as opposed to the entire Section 7.

Senator Dorgan.

SEN. DORGAN: Mr. Chairman, the reason that I think there's an important

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distinction is Title VII includes much, much more than the caps. I would not want to strike, for example, the arbitration matters in Title VII dealing with attorneys' fees and so on and so forth. So that's why I voted against that. I do support the notion, as I think Senator Rockefeller, on whose behalf I offer this, with myself, I do support striking the caps in Title VII.

The Senate yesterday, in a vote on the Senate floor, went on record saying that it did not want to provide immunity. I think that the caps themselves effectively provide some immunity here. And, you know, I really think that we ought to abolish the caps that are embedded in Title VII.

I know that there are some who feel strongly that there are limitations that need to be imposed here, but I -- you know, the investment community, I would say, values this industry at \$180 billion; presumably the investment community is valuing an industry after probable legal liabilities are paid. The industry, of course, can pass on virtually all increased costs from the settlement. The tobacco industry earned 4.2 billion from non-tobacco business in 1996, 3.6 billion from foreign operations in 1996.

I think the expression yesterday by the full Senate, which was a fairly aggressive expression by the Senate, nearly 80 votes, saying that there ought not be immunity here, I think should persuade this committee to strike the caps from Title VII.

SEN. KERRY: Mr. Chairman?

SEN. MCCAIN: Thank you, Senator Dorgan. I voted for the amendment yesterday, as well as a majority of the committee. I view the caps as different from immunity. And some may not but I do. And I think all the committee members are aware that this is a vital piece of this hard-fought compromise, and I understand the senator's position.

Is there further debate?

Does the senator desire a roll call vote?

SEN. KERRY: Mr. Chairman?

SEN. MCCAIN: Senator Kerry.

SEN. KERRY: Mr. Chairman, I'd like to just also join you in making clear, because I joined you in voting and I'm one of those 80.

In my mind, there is -- and it's not a distinction without a difference and it's not mere legalese. A few days ago we had the complete elimination of class actions, we had the inability to seek punitive damages in actions based on past conduct, we had a prohibition against aggregating claims, we had a prohibition against suing more than one tobacco company in each action, we had the elimination of the availability of certain evidence, we had the elimination of third-party claims, and in effect we had immunity in a whole set of categories with any suit, from any liability. Liability is a judgment of fault, of responsibility.

All of that has been wiped away now. All of that. There is no exemption from liability here. There is merely a restraint on the rate of payout. So it could go on for 100 years. The word "restraint" you used for a very specific purpose. I understand it. That's precisely why I offered the amendment. A cap here imposes a restraint. The restraint is imposed, I assume, and felt valuable by some for a very specific reason, because it will limit the amount of liability payment at certain times.

And, you know, I respect the notion people see this issue differently, but I see the cap as an extension of some kind of immunity or restraint. And that's precisely why I offer an amendment to eliminate this cap. It seems to me that particular restraint on payout for liabilities that are judged to be valid liabilities, that kind of restraint, in my judgment, is inappropriate.

SEN. MCCAIN: Senator Breaux, briefly.

SEN. BREAUX: Well, I just want to make a comment that we're trying to get an

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agreement here. If you have an agreement, you have to have more than one party to the agreement. Otherwise it's not going to be an agreement with anybody but yourself. And I think that what the attorney generals have done is brought to us a good agreement. We've modified it.

But if we wipe it out, we're going to end up with nothing. We're going to end up with a piece of paper saying to a group of companies to pay certain things, and there's nothing in it for them. And we're going to end up destroying all the things that we're trying to do from a healthy basis. That's the most important thing we could possibly be doing. I think this eliminates all of that.

SEN. MCCAIN: Do you require a voice vote or a roll call vote, Senator?

SEN. ROCKEFELLER: Mr. Chairman?

SEN. MCCAIN: Oh, I'm sorry. Senator Rockefeller. I'm sorry, Senator Rockefeller.

SEN. ROCKEFELLER: Mr. Chairman, I understand exactly what Senator Breaux is saying and I agree with what he's saying. But I don't think that that precludes -- and I do not want to be a party to destroying an agreement. On the other hand, I don't think that says that a senator or a series of senators can't bring up an amendment which they think is of substantive moral and real value, with the fairly clear, I think, realistic understanding that it possibly may not prevail.

The business of restraint is important, because if people who are dying of some kind of a disease win and then get paid 10 years later, what good is that? Because the cap has imposed a restraint which, in fact, takes their ability to recover away from them.

SEN. : Mr. Chairman?

SEN. ASHCROFT: Mr. Chairman?

SEN. MCCAIN: Senator Ashcroft.

SEN. ASHCROFT: It's pretty clear that while there may not be a restraint in liability, there's a restraint in payment here. And I don't know if that's a great consolation to someone who's supposed to be paid to know that someday, some way, that they're in line to get paid. And the idea that this is somehow the straw that breaks the camel's back after senators have recited for us that other straws have been lifted from this document with great frequency over the last couple of weeks indicates that the document has been undergoing lots of adjustments and change as a result of the way the senators have viewed it. So I commend Senator Dorgan. I would ask if he would consent to my being made a co-sponsor of the amendment.

SEN. MCCAIN: Without objection, Senator Ashcroft will be named a co-sponsor. Senator Dorgan, do you want a roll call vote?

SEN. DORGAN: I'd like a roll call.

SEN. MCCAIN: The clerk will call the roll.

CLERK: Mr. Stevens.

SEN. STEVENS: No.

CLERK: Mr. Burns.

SEN. BURNS: No.

CLERK: Mr. Gorton.

SEN. GORTON: No.

CLERK: Mr. Lott. Mrs. Hutchison.

SEN. HUTCHISON: No.

CLERK: Ms. Snowe.

SEN. SNOWE: No.

CLERK: Mr. Ashcroft.

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SEN. ASHCROFT: (No audible response.)

CLERK: Mr. Frist.

SEN. MCCAIN: No, by proxy.

CLERK: No, by proxy. Mr. Abraham.

SEN. MCCAIN: No, by proxy.

CLERK: No, by proxy. Mr. Brownback.

SEN. BROWNBACK: Aye.

CLERK: Aye. Mr. Hollings.

SEN. HOLLINGS: No.

CLERK: Mr. Inouye.

SEN. INOUE: No.

CLERK: Mr. Ford.

SEN. FORD: No.

CLERK: Mr. Rockefeller.

SEN. ROCKEFELLER: Aye.

CLERK: Mr. Kerry.

SEN. KERRY: No.

CLERK: Mr. Breaux.

SEN. BREAUX: No.

CLERK: Mr. Bryan.

SEN. BRYAN: No. CLERK: Mr. Dorgan.

SEN. DORGAN: Aye.

CLERK: Mr. Wyden.

SEN. WYDEN: No.

CLERK: Mr. Chairman.

SEN. MCCAIN: No.

CLERK: Yeas four, nays 15.

SEN. MCCAIN: The amendment is not agreed to. Did you seek recognition, Senator?

SEN. KERRY: Mr. Chairman, I would like to, because I'd like to explain my vote, at least for the record. And then I'd like to make an amendment quickly. In my judgment -- and I'm very sympathetic with what the senator from North Dakota is trying to do here -- I think the debate is more properly over what the level of the cap ought to be. I sought a higher level and I was unsuccessful.

What you have to do here, it seems, is make some kind of judgment of how much annually companies are capable of paying as a matter of judgment. If you don't do that, then we wind up with the problem that we kept running into in the course of the hearings, which is the rush to judgment. As we've seen in the asbestos cases, you have a huge number of people who are not getting paid anything because the first lawyers in the courtroom got the first big judgments, and whatever the available pool is is gone. Seventy percent of those companies are bankrupt today.

So it seems to me that what we ought to be arguing about is what is the most appropriate level to make an assumption companies are capable of paying on an annual basis and still staying in business in order to be able to do what Senator Breaux was talking about, which is pay for these other things. And the balance ought to be -- I mean, that ought to be the debate, not whether there should be none; whether there should be some. I know the senator from Missouri, in his own product liability amendment, has a cap. So it seems to me that we ought to try to find some consistency and sense here.

SEN. MCCAIN: Thank you.

SEN. KERRY: Mr. Chairman, I'd like to, if I may -- first of all, I wanted to thank you. I wasn't here this morning, and I apologize for that. But I wanted to say on the record what an outstanding job I think you have done of helping to lead the committee through a thicket of land mines, and it's been a very, very difficult process; obviously not over yet. But I think we're here because of

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your willingness to listen and to balance reason in the process. And I just want to thank you for that.

Secondly, I want to thank Senator Hollings for proffering my amendment earlier today on the subject of child care, which is now taken care of with respect to the federal money.

What I have is an amendment, which I know you've agreed to accept, I think -- it's not controversial -- that simply makes it clear that state money can also be allocated to this so we don't wind up with later arguments to the effect that somehow it's not appropriate or can't be.

SEN. MCCAIN: Can the staff distribute that amendment?

SEN. KERRY: I think everybody understands that if we can do a better job with those children at risk and in stress at the outset, many of them will have the structured input at the earliest stages, when it matters, so that they will already have built in the ability to be able to make a choice about smoking or not smoking. And all of the other efforts that the companies are going to make, that governments are going to make at the state, local, federal level, are going to be impacted by the developmental capacity with which any child comes to that issue.

So we want to make certain, those of us who remain committed to the notion that the fundamental purpose of this legislation is to keep kids from smoking, it makes sense to focus on some of the earliest input that those kids will have that may or may not affect that decision-making process. And that is the purpose of this amendment is simply to permit states -- it doesn't mandate it. They have the choice of doing it or not doing it. But it simply clarifies that this money may be spent for that purpose.

SEN. MCCAIN: Senator Kerry, I want to thank you for all your hard work on this issue, and we're very grateful. You've been with us throughout.

Is there further debate on the Kerry amendment? If not --

SEN. ASHCROFT: May I inquire of the senator, please?

SEN. MCCAIN: Senator Ashcroft is recognized.

SEN. ASHCROFT: It says, "The trustees of the trust fund shall transfer funds each year to be used by the secretary for the following purposes." Is that mandatory, or is that -- how is that --

SEN. KERRY: That's under the legislation. That's mandatory. I mean, most of this money is going to the states under the legislation, under the agreement. And that merely codifies that concept.

SEN. ASHCROFT: Does it mandate that money be spent for those purposes inasmuch as it says, "shall transfer funds"?

SEN. KERRY: It's into a total fund, and the states then can spend it on any of the things that are contained therein. That's under the agreement. There's no mandate that it spend it on any one of them.

SEN. MCCAIN: Further debate? Those in favor of the amendment, say aye.

MEMBERS: Aye.

SEN. MCCAIN: Those opposed?

MEMBERS: No.

SEN. MCCAIN: The ayes have it. The ayes have it.

SEN. KERRY: Mr. Chairman?

SEN. MCCAIN: Yes.

SEN. KERRY: I have a second amendment which is a little more complicated, but I'd like to --

SEN. MCCAIN: What title is it under, Senator Kerry?

SEN. KERRY: It's under the third title. This is with respect to the pricing issue.

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SEN. HOLLINGS: Thirteen-three, I think it is.

SEN. MCCAIN: Thirteen-three?

SEN. HOLLINGS: Increase the per-pack cost of cigarettes?

SEN. KERRY: Mr. Chairman, this goes to the core issue of this entire piece of legislation, which is what the price of a pack of cigarettes ought to be in order to prevent people from smoking. And what I've done is tried to come up with an amendment that I think walks a line between some of the questions that are still raised about the pricing mechanism in this legislation. Under the agreement, we have put forward \$1.10 to the manufacturer. But Drs. Koop and Kessler and countless other sources, countless other sources, have all agreed that what will make the most impact on reducing the amount of children who take up smoking is the price of the pack of cigarettes that they buy. And the price that we have currently designated of \$1.10 is interpreted in different ways, and this is where I'd like my colleagues to make a judgment about it. The tobacco companies tell us that if we raise the cost to them in our fee of \$1.10, it could mean that you could have a cost of a pack of cigarettes of \$2.43 at the retail establishment. On the other hand, a lot of other folks are saying that's not true. If you raise \$1.10 to the tobacco companies, you will not raise it sufficiently fast or sufficiently high to reduce the level of smoking enough.

The bill before us is going to increase the cost by 65 cents in the first year. But in subsequent years, the price increases only amount to about five to 20 cents a year until you get to the overall \$1.10. And that structure of small increases in years two through five will decrease the impact on youth tobacco use.

It is clear in the Chaloupka (sp)-Grossman study, in the GAO study on teenage smoking, in the Jeffrey Harris study in Massachusetts, in about 20 different studies and reports by health experts around the country, that the way in which you will most impact youth smoking is with the price, combined with compliance in the states and with the other programs which we're embracing in terms of reaching out to teenagers through education and so forth.

Now, the tobacco industry will argue to us --

SEN. MCCAIN: Could I mention to you that we have been here all morning and all afternoon and we need to move forward with the amendment. Now, it's been about 20 minutes since you first started talking, and I would appreciate it if we could move forward with this amendment.

SEN. KERRY: Very fast, Mr. Chairman.

SEN. MCCAIN: I thank you, Senator Kerry.

SEN. KERRY: I'll be very, very fast. The tobacco companies suggest somehow bankruptcy is around the corner if we raise the price beyond \$1.10. Every single person on this committee knows that, like any product that is manufactured, that price will be passed on to the person buying it. We will not be raising our price of a pack of cigarettes to the level of the pack in Europe or in other countries. They pay more today. They pay more even than if we had a price of a pack that was at \$1.50.

Now, because there's uncertainty in exactly what the impact is, I'm not asking for a fixed increase of \$1.50. What I'm suggesting in this amendment is that we have a process whereby the Treasury Department will make a price survey a year down the road at a date specific, set one month after the enactment. Based on that survey, we will be able to determine what, in fact, has been the impact and we will then increase automatically the fee to the manufacturer appropriately to guarantee that the price at the retail establishment is what will make the difference in youth smoking. So if, in fact, they're correct today that it's already \$2.40, we will have done nothing. If it's at \$1.50 now, we will have done nothing. But if it is below the level of \$1.50, then we would have set

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in place a process that will guarantee that we will reduce the level of smoking. This is the difference of some 300,000 kids who would get cancer as a consequence of the smoking habit they pick up if we don't have this kind of an impact.

Thank you, Mr. Chairman.

SEN. MCCAIN: Thank you very much, Senator Kerry. I would just point out that we went over this issue very thoroughly, and it was the consensus agreement on both sides of the aisle that \$1.10 was, in effect, \$1.50 a pack of cigarettes. And I believe that this is not a necessary amendment and I would oppose it. Is there any further discussion? If not, the question is on the Kerry amendment. All those in favor say aye.

SEN. KERRY: Aye.

SEN. MCCAIN: All those opposed, say no.

MEMBERS: No.

SEN. MCCAIN: The no's have it. The amendment is not agreed to.

Now, if I could go back, Senator Ford, you have a --

SEN. FORD: Yes.

SEN. MCCAIN: Could I just remind my colleagues again, we're trying to finish tonight, as you know. And I don't want to short anybody out of their time, but we have a lot of pages left to go over. And we'd like to go ahead and dispense with those that do not require serious consideration and focus on those that do. And I would appreciate it if all colleagues who have amendments would look at theirs carefully so that we can move forward.

Senator Ford, do you have additional amendments?

SEN. FORD: No, I have the one that we set aside, Mr. Chairman, and that was to limit the overall payments of 25 years to the \$506 billion. And after consultation with the Treasury, neither one contains a look-back. Neither one contains the cap. And the only difference, apparently, is the up-front payment of \$10 billion, which will be -- they'd have to borrow and pay interest on it. But nevertheless, I think we'll just go ahead and vote on mine as I have it, and then we'll see how that works out. I'm sure that you'll win again. And I always tilt toward a winner if I can, but this way I have to tilt the other way on this one right now. But \$506 (billion) -- and the only difference here is the up-front payment in the calculations. And so it's either -- and if they're not going to start inflation until the sixth year, then we probably don't need it, according to the testimony of the secretary -- from the Treasury's office. So, therefore, \$506 (billion) probably would be a cap that we could live with. So I ask for a roll call vote, Mr. Chairman.

SEN. MCCAIN: The clerk will call the roll.

CLERK: Mr. Stevens.

SEN. MCCAIN: No, by proxy.

CLERK: By proxy. Mr. Burns. Mr. Burns.

SEN. BURNS: No.

CLERK: Mr. Gorton.

SEN. GORTON: No.

CLERK: Mr. Lott. Mrs. Hutchison. Ms. Snowe.

SEN. SNOWE: No.

CLERK: Mr. Ashcroft.

SEN. ASHCROFT: No.

CLERK: Mr. Frist.

SEN. FRIST: No.

CLERK: Mr. Abraham.

SEN. ABRAHAM: No.

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CLERK: Mr. Brownback.
SEN. BROWNBAC: No.
CLERK: Mr. Hollings.
SEN. HOLLINGS: No.
CLERK: Mr. Inouye.
SEN. INOUE: No.
CLERK: Mr. Ford.

SEN. FORD: I'm still there. Aye.
CLERK: (Laughs.) Mr. Rockefeller.
SEN. ROCKEFELLER: No.
CLERK: Mr. Kerry.
SEN. KERRY: No.
CLERK: Mr. Breaux.
SEN. BREAU: No.
CLERK: Mr. Bryan.
SEN. BRYAN: No.
CLERK: Mr. Dorgan.
SEN. DORGAN: No.
CLERK: Mr. Wyden.
SEN. WYDEN: No.
CLERK: Mr. Chairman.
SEN. MCCAIN: No.
CLERK: Yeas one, nays 15.
SEN. : Mr. Chairman, you may record me as a no.
SEN. FORD: Misery loves company. Thank you.
SEN. MCCAIN: The amendment is not agreed to. So we will move now to title five, where there are --
SEN. WYDEN: Mr. Chairman?
SEN. MCCAIN: Senator Wyden.
SEN. WYDEN: Just so I understand it, are you going to come back to title three? I know I have an amendment on second-hand smoke in this title. Was it your intent to come back to three?
SEN. MCCAIN: I'm sorry. I apologize. I've obviously got a bad document here. If your amendment is prepared, please propose it.
SEN. WYDEN: Thank you, Mr. Chairman. It would be Wyden 1 at the end of title three on second-hand smoke.

SEN. MCCAIN: The clerk will distribute the amendment. Please proceed, Senator Wyden.

SEN. WYDEN: Mr. Chairman, thank you. This amendment deals with a very simple proposition, and that is that non-smokers have a right to be protected from cancer-causing tobacco smoke regardless of the state that they find themselves in. Under the legislation now before us, a state, in effect, could opt out of the protections with respect to those, for example, who work indoors in office buildings. The organization that represents 6 billion square feet of office space nationwide, the Building Owners & Managers Association International, thinks that this is bad not just for the environment, but it's bad for business. Chairman McCain and colleagues have heard me say that I think that this has been a very significant step forward in the public health debate. And in virtually every area of this mark, we have moved forward from the settlement. But with respect to second-hand smoke, with respect to second-hand smoke, say, in office buildings -- 40 percent of Americans work indoors today and still do not work

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in smoke-free environments -- we've actually stepped backwards from the attorney generals' settlement.

Environmental tobacco smoke is a known human lung carcinogen. It's the nation's third-leading cause of premature death, killing over 50,000 Americans each year through cancer and heart disease. It is the largest single source of pollution in the air. And all my amendment does is one thing: It keeps the exemptions that are in the chairman's own mark, the exemptions for things like casinos and bowling alleys and the like, but it says that a state can't opt out with respect to protecting a majority of its citizens if you're talking about protecting their health in an office building.

So I would hope that my colleagues would support this. And what I do with this amendment is essentially bring, on the cause of second-hand smoke, bring us back to where the attorneys general were in their original settlement. I ask for my colleagues' support.

SEN. MCCAIN: Senator Wyden, I'd just like to point out that the reason why we allowed the states to opt out of these rules is because of our experience with other laws where we've mandated incredible burdens on the states. And we believe that most states will look at this from the same standpoint that Senator Wyden does and the health care community. But we believe that it's important for the states to exercise some sovereignty and some ability to decide, through their legislatures and governors, their future. I understand his commitment. And, by the way, I also understand how strongly the public health organizations feel about this.

But I would remind Senator Wyden that we had kind of some bad experiences with the Americans with Disabilities Act. We had cities and towns that had city halls that they simply could not afford to rebuild because of the fact that they didn't have the monetary capacity, and they found themselves out of compliance. And that wasn't the intent of the Americans with Disabilities Act, as we know. And that's the reason why we put it in there.

But I also understand Senator Wyden's absolute commitment to this issue, and I appreciate it. I just have to disagree.

Is there further debate on this amendment?

SEN. WYDEN: Mr. Chairman?

SEN. MCCAIN: Senator Wyden.

SEN. WYDEN: Just very, very briefly, because I know that time is short.

I also am sympathetic with your point. The Building Owners and Managers Association, which supports this, a private-sector firm, believes that it's possible to have this nationwide protection for nonsmokers and have the flexibility that Chairman McCain is right to talk about, with the exemptions that are provided for casinos and the various restaurants and the like. So I know that this is a difficult vote for a lot of members. But this is an issue of extraordinary public health importance. Hundreds of thousands of kids get sick each year as a result of this smoke, and I just don't think we ought to let protection with respect to this public health issue essentially revolve around the proposition of where you happen to be.

And I yield back, as time's short.

SEN. MCCAIN: Does the senator require a roll call vote?

SEN. WYDEN: Why don't we see on a voice vote where it stands?

SEN. MCCAIN: Okay.

All those in favor of the Wyden amendment signify by saying aye.

SEN. WYDEN: Aye.

SEN. MCCAIN: All those opposed?

(A chorus of "no's.")

SEN. MCCAIN: The amendment is not agreed to.

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Senator Rockefeller, do you have an amendment?

SEN. ROCKEFELLER: I do, Mr. Chairman, and I thank you.

This has to do with veterans and having the Veterans Administration have the ability to sue tobacco companies for compensation costs. They can sue for health care but they cannot sue for compensation. Please understand that tobacco companies, working together with the United States government, gave away free cigarettes, a whole variety of wars, discounted by 76 percent, as much as that, PX's et cetera, "smoke them if you got them," the whole thing.

My amendment would do two things to protect our veterans. It would give VA the right to sue tobacco companies to recover the cost of compensating veterans and their survivors for tobacco-related illnesses which resulted from nicotine dependence that arose in service, for which there is a very, very tough test in the VA; and secondly, it would provide that any amount recovered by VA for compensation costs would be outside the \$6.5 billion annual cap.

I will say in closing that the amount of money is not expected to be great, but the -- and very small. In fact, to date only 278 cases have been granted nationally, nationally, for smoking-related illness.

But this is -- the principle of this is credible. The soldiers were virtually handed their fate in many cases. They're growing older. I think this is fair. And I put it forward as an amendment.

SEN. MCCAIN: Thank you very much, Senator Rockefeller.

Attorney General Norton, would you care to comment on this amendment?

MS. NORTON: It's my understanding that this deals with an issue we have addressed in the past, which is the ability of the United States to file suit to recover for expenditures made by the United States. I'm sorry if I have misunderstood -- this is the first I've seen of your amendment.

The United States has had the ability to file suits in the past. I understand there's some question about the mechanism that is used in here for the --

SEN. ROCKEFELLER: Attorney General, you're not correct on that. We have the ability to sue for health costs but not for compensation. That is a critical difference.

MS. NORTON: You're talking about compensation to the veterans themselves?

SEN. ROCKEFELLER: Yes.

MS. NORTON: I am not familiar with what the mechanisms are that would currently be available in federal law. I would not anticipate that there is an existing mechanism for the US Department of Justice to sue to obtain compensation on behalf of an individual veteran.

SEN. ROCKEFELLER: There is not. That is correct. That's why I say, because of the special relationship between veterans and tobacco over these many years, I think this is a reasonable amendment.

And I would ask for the yeas and the nays.

SEN. MCCAIN: Senator Rockefeller, we're --

Senator Gorton, do you have a view on this amendment?

SEN. GORTON: Well, honestly, I wish I had heard all of the considerations in connection with it.

But I gather that we lose the ability for any individual, whether he or she is a veteran or not, to bring a lawsuit for compensation. I'm not sure that we want the United States bringing lawsuits for compensation for people in bulk, simply because of a former veteran's status. Shouldn't all citizens be at the same -- you know, have the same right to seek compensation?

But I'm not sure about this. The reason the United States can sue to recover medical expenses is that it is engaged in the payment of these medical

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benefits, they're a veteran's benefit. And of a sudden to put the United States in the position of sort of bringing class actions for people's individual compensation, is something I don't think we have in any other field. I don't know of a field in which the United States can sue for individual damages to individual citizens.

Is there such a cause of action for anything else?

SEN. ROCKEFELLER: To my friend from the state of Washington, I would say this is not any American, this is veterans.

SEN. GORTON: Well, I'm still asking the question. Is there any other class of people for whom the United States brings lawsuit to get their -- to recover their individual damages?

SEN. ROCKEFELLER: Unlike my friend from Washington, I'm not a lawyer so I can't answer that question. I am, however, aware that there is this unique relationship, and, I mean, I have to say that, between tobacco companies and veterans. The amounts of money are paltry. I again repeat in the entire country only -- the tough -- the tests for all of this are so tough that only 268 veterans have been awarded damages. I mean, I really -- this is not a big financial matter. But it's a very important principle because of the unique relationship between tobacco and our soldiers.

And I ask for the amendment. Whether there's press or not, I don't know --

SEN. MCCAIN: I thank --

SEN. ROCKEFELLER: And I can't read the note that was just put in front of me. (Laughter.)

SEN. BRYAN: Mr. Chairman, may I ask -- (laughter) --

SEN. MCCAIN: Senator Bryan.

SEN. BRYAN: May I ask the senator a question to make sure I understand his amendment?

SEN. MCCAIN: Say that again.

SEN. BRYAN: May I ask Senator Rockefeller a question? I want to make sure that I understand.

SEN. MCCAIN: Absolutely.

SEN. BRYAN: If I could get the senator's attention for a moment. My understanding is that there's two preconditions before this would occur, one of which, the veteran would have to be determined to be eligible for some disability compensation as a result of tobacco; and secondarily, the federal government would have made a disbursement pursuant to that determination, but the amount of recovery would be limited to the amount of money the federal government paid pursuant to --

SEN. ROCKEFELLER: That is correct.

And there's an additional thing which may help the senator from Washington.

This money does not, that I'm asking for under here in compensation, does not go to the veteran himself or herself; it goes to the Veterans Administration. So I think --

SEN. BRYAN: Well, with that explanation, Mr. Chairman, I think it's a valid amendment.

SEN. MCCAIN: Senator Rockefeller, I think we can accept your amendment on a voice vote.

All those in favor of the Rockefeller amendment, signify by saying aye.

(Cross talk.)

All those opposed to the Rockefeller amendment?

SEN. : No.

SEN. MCCAIN: In the opinion of the chairs, the ayes have it. The amendment is agreed to.

Senator Rockefeller, could I just say this, in all fairness to you, if there

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are some ramifications that I don't understand, then -- and other members don't understand that may lead to some huge expenditure of money, that we're going to want to revisit this issue. And I know you understand that.

SEN. ROCKEFELLER: The chairman is entirely fair.

SEN. MCCAIN: There was some consternation about the amendment of Senator Kerry concerning the states' distribution of funds. The wording, which was raised by the senator from Missouri -- if I could have his attention -- "shall" -- I believe that senator Kerry will be recognized to make a change there.

Senator Kerry.

SEN. KERRY: Mr. Chairman, I think the senator from Missouri raised a legitimate point, and my answer to him, in keeping with the spirit of my answer to him, I would simply ask for a technical change, the word "shall" to "may," and if we could make that modification I would appreciate it.

SEN. MCCAIN: I ask unanimous consent that the Kerry amendment that was passed by voice vote, the word "shall" shall be changed to "may," which is an important distinction, as we all know.

And I thank the senator from Massachusetts for making that change. And I appreciate that very much.

We now -- is there any more amendments on Title III or Title IV?

Senator Ford, we have a number of amendments and what I'd like to do, Senator Ford, is you just let me know when you want to propose -- when you want to propose another one of your amendments, Senator Ford, would you just jump in, because literally every one of these titles has your amendments on it. We'd be glad to consider them.

On Title V, we have -- excuse me, we already did Senator Wyden's amendment.

We're up to Title VI now, I believe, and that's Gorton 1 and Gorton 2. Senator Gorton is recognized.

SEN. FORD: Mr. Chairman, are we still -- are we on Title IV now?

SEN. GORTON: No, we're on Title VI.

SEN. MCCAIN: Moved on -- we've moved on to Title VI. I'll be glad to -- as I mentioned earlier, Senator Ford, we'll be glad --

SEN. FORD: I'm going to reserve my right.

We're trying to work out something under Title IV. If we can work it out, that's better for everybody. So I think we'll save time, we can just pass over that and allow me to come back if necessary.

SEN. MCCAIN: Senator Ford, as I said earlier, any amendment that you wish to come back to, I'm sure the committee would be agreeable. We know how difficult this process is, especially for you.

Senator Gorton.

SEN. FORD: I thank you, sir.

SEN. GORTON: Mr. Chairman, I'll take Gorton 1 before Gorton 1, because I think Gorton 2 is agreed to. The other will require debate.

The bill that we have before us gives tribes jurisdiction over all of the land on a reservation, including land that's owned in fee simple and currently subject to state and not tribal regulation. I don't believe that that was the understanding. It's a huge increase in Indian jurisdiction. The AGs did say that it was appropriate to use the Clean Air Act as a model for the purposes of determining whether a tribe that receives grants under the bill has a viable tribal government.

But this goes beyond that and instead of creating jurisdiction in 50 states over general smoking rules creates something like 600 different jurisdictions, including the right to run businesses that have nothing to do with Indians except for the fact that they're inside of an Indian reservation boundary on

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fee land. And that's a huge expansion of jurisdiction. The amendment is designed simply to make it comport with what the AGs have said. But the bill also strikes -- this amendment also strikes the provision that allowed the HHS secretary to waive any FDA provision with respect to smoking and delegate those to individual Indian tribes. These uniform -- the FDA rules ought to be uniform throughout the country. Where there is state jurisdiction now, that state jurisdiction ought to be retained.

SEN. : CAIN: Senator Gorton, so I'm perfectly clear, we're talking about Gorton 2?

SEN. GORTON: That's correct. That's correct.

SEN. MCCAIN: Senator Gorton, I am prepared. I can't speak for the rest of the committee -- but I am prepared to accept this amendment, with the understanding that we're continuing our discussion --

: SEN. GORTON: Yes, I don't think -- it's not drafted perfectly yet, and we need to complete that work.

SEN. MCCAIN: All those in favor -- is there further discussion of the Gorton amendment number 2? If not, all those in favor signify by saying aye.

(Several ayes heard.)

All those opposed, no.

The ayes have it. The Gorton amendment is agreed to.

SEN. GORTON: Gorton number 1 is designed to say that all state taxes that are imposed on cigarettes will be imposed on sales on Indian reservations to non-Indians. This is a question that has gone all the way twice to the Supreme Court of the United States. The Supreme Court has ruled that those taxes are in fact collectible.

They have not been collected because of the ability of tribes to avoid suit by state taxing authorities on grounds of sovereign immunity. The original Gorton amendment here deals with that question of sovereign immunity. I really don't want to do that here. That's a controversial matter which is a subject of other bills and other hearings.

Senator Bryan, who agrees with me on this philosophy, has a second-degree amendment. The second-degree amendment will avoid any interference with tribal sovereign immunity. It will simply require the Indian tribes to collect these taxes and turn them over to the federal government, which will then remit them back to the states.

But I don't think, while we're trying to price cigarettes at a level at which we discourage kids from smoking, we don't want to have a whole bunch of places in the country where cigarettes are dramatically cheaper than they are elsewhere because they aren't paying taxes. The idea is to price them at a level at which smoking will be discouraged, and this just simply says that the price will be essentially identical, except for the markup, everywhere in each state.

SEN. BRYAN: Mr. Chairman, if I might --

SEN. MCCAIN: Senator Bryan is recognized.

SEN. BRYAN: Very briefly, Senator Gorton has spoken to the amendment which I would intend to offer when appropriate as a second-degree amendment. I agree with the philosophy of his primary amendment. And as he has indicated, the purpose of my second-degree amendment is to avoid the sovereign immunity implications of his amendment in its original form and would simply provide that the money so collected would be collected by the Treasury of the United States, where it would be remitted to the tribes, and then ultimately remitted to each of the respective states in which they were collected. So at the appropriate time, I'd like to offer that.

SEN. GORTON: Mr. Chairman --

SEN. MCCAIN: Yes, Senator Gorton.

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SEN. GORTON: -- I just want to say that these are in some states -- in Washington State, which is not the highest cigarette-tax state in the country, the tax is 84 cents a pack. That is almost \$9 a carton. That 84 cents is more than half of the \$1.50 that we're aiming to increase the price of cigarettes by. You know, to, in effect, allow one group of people to sell cigarettes at 84 cents less a pack than others do in the same area is certainly totally contrary to the general tenor of this bill to discourage smoking, especially by young people, by causing cigarettes to cost more money.

SEN. MCCAIN: Senator Bryan, you're recognized to offer your second-degree amendment, and the clerk will distribute.

SEN. BRYAN: I appreciate that, Mr. Chairman. I have explained this once and I don't want to belabor the point. I would offer the second-degree amendment at this point. I'd like to point out that the only change is the collection mechanism.

SEN. MCCAIN: I'd like to recognize the former chairman of the Indian Affairs Committee, Senator Inouye.

SEN. INOUE: Mr. Chairman, I thank you very much. As you're well aware, the Committee on Indian Affairs, at the request of the senator from Washington, will be conducting three hearings -- one in Minnesota, one in Seattle next Tuesday, and the other in Washington -- to discuss the core item that is involved in this amendment, sovereignty.

Secondly, many of the tribes that maintain and operate smoke shops already have agreements as sovereign entities with the sovereign state as to the level of taxation and the mode of payment. I believe the state of Washington has an agreement with Indian tribes on the matter of collection and payment of state taxes.

So I believe that this matter belongs in the Indian Affairs Committee, if anything, and should not be considered in this measure.

SEN. MCCAIN: Senator Gorton. SEN. GORTON: Mr. Chairman, the amount of money involved is very large. In the state of Washington it's \$64 million this year. The question -- this has nothing to do with sovereignty, because this is a federal requirement under the second-degree amendment proposed by Senator Bryan. The question is very simple: Do you want a large number of areas in the United States where cigarettes are still cheap and still available to young people cheap? In this case, 84 -- or in this one state, 84 cents less a pack than they are anywhere else.

The hearings on sovereign immunity go way beyond this question to all forms of taxation, to whether or not lawsuits can be brought.

This is simply an obligation imposed by the United States on the Indian tribes to collect additional tax to the tax that it already collects for the United States, equal to the state tax, so that the same taxes will be paid uniformly all across each state. It has nothing to do with sovereignty. It has everything to do with kids smoking.

SEN. MCCAIN: The question is on the amendment. Do you wish for a recorded vote, Senator Gorton?

SEN. FORD: Do you have your second degree on it?

SEN. MCCAIN: Yes, the second degree on it.

SEN. GORTON: We're on the second degree.

SEN. MCCAIN: Okay, the question is on the second-degree amendment. Do you wish to --

SEN. GORTON: Well, let's take an oral vote, and if it's one side --

SEN. MCCAIN: All those in favor of the Bryan second-degree amendment, signify by --

SEN. GORTON: No, I'd ask for a roll call, Mr. Chairman.

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SEN. FORD: On all of it, or as amended?
SEN. GORTON: Just on Bryan.
SEN. MCCAIN: As amended?
SEN. GORTON: Just on Bryan. Oh, yeah, just on Bryan.
SEN. MCCAIN: The clerk will call the roll.
CLERK: Mr. Stevens.
SEN. MCCAIN: No, by proxy.
CLERK: Mr. Burns. SEN. BURNS: Aye.
CLERK: Aye. Mr. Gorton.
SEN. GORTON: Aye.
CLERK: Mr. Lott. Mrs. Hutchison. Ms. Snowe. Mr. Ashcroft. Mr. Frist. Mr. Abraham.
SEN. ABRAHAM: Aye.
CLERK: Mr. Brownback. Mr. Hollings.
SEN. HOLLINGS: No.
CLERK: Mr. Inouye.
SEN. INOUE: No.
CLERK: Mr. Ford.
SEN. FORD: No.
CLERK: Mr. Rockefeller.
SEN. ROCKEFELLER: Aye.
CLERK: Mr. Kerry.
SEN. KERRY: Aye.
CLERK: Mr. Breaux.
SEN. BREAU: No.
CLERK: Mr. Bryan.
SEN. BRYAN: Aye.
CLERK: Mr. Dorgan.
SEN. DORGAN: No.
CLERK: No. Mr. Wyden.
SEN. WYDEN: Aye.
SEN. MCCAIN: Mr. Brownback is no by proxy.
CLERK: Brownback is no by proxy.
SEN. MCCAIN: And Ashcroft is no by proxy. CLERK: Ashcroft is no by proxy.
SEN. : Mr. Chairman, Frist is aye.
SEN. MCCAIN: Dr. Frist is aye.
CLERK: Frist is aye.
SEN. MCCAIN: And I'm no.
CLERK: You're no. Oh, land. Yeas eight, nays nine.
SEN. MCCAIN: The amendment is not agreed to. Now we'll move to title seven. Senator Hutchison has -- she's not here. Senator Brownback -- Senator Hutchison is not here. Senator Brownback wants to offer his amendment later, so we will set that aside, as well as Senator Hutchison's.
Senator Dorgan, you had a Dorgan 2 amendment. I see Dorgan 1 was withdrawn, if we're looking at the same document here. And Dorgan 2, which was to allow punitive damages above the caps -- do you still wish to propose that amendment?
SEN. DORGAN: Mr. Chairman, I will not propose it. I do have two additional amendments, however; one towards the end of the bill on antitrust and the other, an NIH amendment. So whenever it's appropriate, I will offer them.
SEN. MCCAIN: Okay. We'll certainly keep that in mind. I'd like to try and keep through the titles here. Senator Breaux, do you have an amendment that allows recovery from insurance firms if the tobacco manufacturer can't pay?
SEN. BREAU: Yeah.
SEN. MCCAIN: Do you care to propose that at this time?
SEN. BREAU: If I can do it now.

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SEN. MCCAIN: Senator Breaux is recognized.

SEN. BREAUX: Mr. Chairman, the purpose of this amendment is to --

SEN. FORD: What number is it?

SEN. BREAUX: It's number -- I don't know.

SEN. FORD: Okay.

SEN. BREAUX: Breaux one and only. The purpose of it is to require, in the event a tobacco manufacturer is unable to make any payments that might be required under the act, that parties may seek recovery from available insurance companies money that they would be provided under an insurance plan to the tobacco company.

The claim against an insurance company must be based -- it would be based on the liability of the tobacco company and it would only be for the amount of coverage that they would be insured for.

In other words, the purpose of the amendment says that if you have a legitimate claim against a company and for some reason they can't pay it, that the insurance company who provides that coverage can also (go against?) as far as the purposes of the recovery. It doesn't create any new rights for any party. It just says that if there's insurance, the insurance company should be responsible up to the amount of their insurance for any claims that are claims against the tobacco company. It really takes care of the fact of insolvency by the tobacco company, that if it does have insurance, the insurance company should be responsible for what they cover in their insurance policy. I don't think it's clear in the bill.

SEN. MCCAIN: Senator, could I interrupt you for one second? I'll wait till you finish.

SEN. BREAUX: I'm basically finished.

SEN. MCCAIN: Apparently there was a mistake in the voting of proxy on the last amendment of Senator Ashcroft, that Senator Ashcroft would have voted aye and not no. And would the clerk reflect the results if Senator Ashcroft had voted aye instead of no on the last amendment?

SEN. FORD: That changes the outcome of the amendment, Mr. Chairman.

CLERK: Yes.

SEN. MCCAIN: I'm afraid it does.

CLERK: Yes, it's nine yeas to eight nays.

SEN. MCCAIN: Then the amendment -- then I'm afraid that the amendment --

SEN. FORD: Mr. Chairman?

SEN. ROCKE ELLER (?): Mr. Chairman, the senator from WestsoVirginia wUuld change his vote. SEN. MCCAIN: The senator from West Virginia wishes to change -- Senator utchison is an aye vote also.

CLERK: One, two, three, four, five, six, seven, eight, nine. I think it's eight yeas to 10 Grys. It's changed? No? (Cross-talk among maugers.) (Lre hter.)

SEN. FORD: It's nine-nine. CLERK:Senine-nine. Okay. Nine-nine.

SEN. MCCAIN: Let me say this. I understand the importance of this amendment to my friend from the state of Washington. Senator Snowe has not voted and who else has not -- Senator Lott cannot vote. So Senator Snowe has not voted on this issue. I would ask unanimous consent that we leave this vote open until we consult with Senator Snowe so that there is a complete vote on this issue. I understand how important it is to the senator from Washington. So with the indulgence o the commitd so we'll wait until Senator Snowe is consulte by our esn know what her vote on this amendment is.

Senator Brownback, you were recorded -- how was Senator Brorded?k recoman's mar

CLERK: Brownback was proxy no.

SEN. MCCAIN: You were proxied no, Senator Brownback.

SEN. BROWNBACK: I'd like to be proxied as yes.

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SEN. MCCAIN: Senator Brownback is proxied as yes.

SEN. HOLLINGS: Proxiedha SEN. MCCAIN: Excuse me. He actually votes yes. (Laughter.)

SEN. HOLLINGS: Proxied as yes.

SEN. BROWNBACK: (I might as well?) be here in p SEN. M ut, you'reCAIN: (Inaudible) -- votes yes.

CLERK: Would you like me to read the yeas?

SEN. BREAUX: Yeah, why don't you?

SEN. MCCAIN: Sure, go ahead. Tell me the yeas and the nays, please.

CLERK: Yeas: Mr. Burns, Mr. Gorton, Mrs. Hutchison, Mr. Frist, Mr. Abraham, Mr. Brownback, Mr. Kerry, Mr. Bryan, Mr. Wyden. One, two, three, four, five, six, seven, eight. SEN. MCCAIN: And Ashcroft.

CLERK: And Ashcroft, okay. SEN. MCCAIN: I'm sorry that we're putting this pressure on you, dear.

CLERK: I think it's one, two, three, four, five, six, seven, eight, nine, 10 yeaE.

SEN. MCCAIN: So there has to be nine nays. And t -- mendmensiden CLERK: No, wait. One, two, three, SEN. y jefg coMCCAIN: Oh, Senator Snowe is here.

CLERK: It's eight.

SEN. MCCAIN: So it's eight no's, right?

CLERK: Yes, eight.

SEN. MCCAIN: And eight no's. Senator Snowe, this is an important amendment to Senator Gorton and the rest of the committee. (Laughter.) It's important to me and it's important to Senator Inouye. (Laughter.) Are you sure you don't want to just leave? (Laughter.)

SEN. SNOWE: I thought I had. (Laughter.)

SEN. MCCAIN: Do you wish to vote on this amendment, Senator Snowe?

SEN. SNOWE: Yes.

SEN. MCCAIN: Really, there's already 10 ayes, so it is already carried. But it's -- because --

SEN. : (Inaudible.)

SEN. SNOWE: No.

SEN. MCCAIN: The vote is no. So would you give us a final tally, my dear? And I apologize for putting you through this difficult experience.

CLERK: Yeas 10, nays nine.

SEN. MCCAIN: The amendment is agreed to.

SEN. : Now, does that -- since technically, that was a second agree, can we just voice vote? SEN. MCCAIN: Yes. All those in favor of the amendment, now that we've completed a second agreement, say aye.

(Ayes.

)

SEN. MCCAIN: Opposed?

SEN. : No.

SEN. MCCAIN: The ayes have it, and the amendment -- the Gorton Amendment is agreed to.

Now, I'm sorry, Senator -- well, I apologize, but I thought we ought to clear that up as quickly as possible, because I misinterpreted -- I was misinformed about proxy votes. I want to apologize to Senator Brownback, I want to apologize to Senator Frist, and also to Senator Ashcroft in absentia. Senator Breaux, please continue.

SEN. BREAUX: Well, that was perfectly clear. (Laughter.) My amendment, just to state it very quickly, requires that in the event that a tobacco manufacturer is unable to make any payments that they will be required to make under this agreement, that parties would be able to seek recovery from available